

U.S. Department of Labor

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Issue Date: 23 August 2004

In the Matter of
STEVEN BARROZA
Claimant

v.

NAVY EXCHANGE SERVICE COMMAND¹
Employer

and

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS
Party in Interest

Case Nos.: 2003 LHC 564
2003 LHC 565
2003 LHC 566
2003 LHC 567

OWCP Nos.: 15-44338
15-42661
15-38431
15-32503

Appearances: Mr. Jay Lawrence Friedheim, Attorney
For the Claimant

Mr. William N. Brooks, II, Attorney
For the Employer

Before: Richard T. Stansell-Gamm
Administrative Law Judge

**DECISION AND ORDER -
DENIAL OF MEDICAL BENEFITS**

This case involves claims filed by Mr. Steven Barroza for medical benefits under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901 to 950, as amended ("Act"), as made applicable by the Non-Appropriated Fund Instrumentalities Act, 5 U.S.C. §§ 8171 to 8173, associated with a series of injuries that he suffered while an employee of the Navy Exchange Service Command ("Navy Exchange" and "Employer").

On November 13, 2002, through counsel, Mr. Barroza filed a pre-hearing statement seeking medical benefits and medical expense reimbursement. On November 27, 2002, the District Director forwarded the pre-hearing statement to the Office of Administrative Law Judges. Pursuant to a Notice of Hearing, dated January 29, 2003 (ALJ I),² I conducted a formal

¹Based on the hearing representation of Employer's counsel (Transcript, page 5), I have changed the Employer's designation from Navy Resale Support System to Navy Exchange Service Command.

²The following notations appear in this decision to identify exhibits: CX – Claimant exhibit; EX – Employer exhibit; ALJ – Administrative Law Judge exhibit; and TR – Transcript.

hearing on May 13, 2003 in Honolulu, Hawaii, attended by Mr. Barroza, Mr. Friedheim, and Mr. Brooks. My decision in this case is based on the hearing testimony and all the documents admitted into evidence: CX 1 to CX 8 and EX 1 to EX 15.³

ISSUES

1. Whether Mr. Barroza suffered work-related injuries on: February 1, 1989; October 18, 1993; February 9, 1998; and, February 15, 2000.
2. Entitlement to medical benefits.

Parties' Positions

Claimant⁴

Mr. Barroza started working for the Navy Exchange in 1972. Eventually, he became a heavy duty auto mechanic and worked in that capacity for over 20 years at the Barbers Point Naval Station ("Barbers Point"). He is a tough individual who liked his work. However, over the years, being an auto mechanic wore him out.

In the early 1990s, Mr. Barroza also started working as a part-time security guard at an apartment complex. When Barbers Point began shutting down in 1993/1994, Mr. Barroza changed to part-time as an auto mechanic and started full-time work as a security guard. When Barbers Point finally closed, Mr. Barroza was offered a full-time auto mechanic job at Pearl Harbor. He declined the offer and retired for two reasons. First, he did not want to work in a new location. Second, his neck couldn't take the strain anymore.

Mr. Barroza's neck problems began in 1989. Prior to that time, he did not experience any back or neck problems. In February 1989, while compressing a coil on a car strut, Mr. Barroza felt a sharp pain or jolt in his neck. He reported the pain to his supervisor. The neck condition improved with medical treatment.

In October 1993, Mr. Barroza woke up one morning with his neck twisted and locked. A physician was able to resolve the problem with heat therapy and traction.

³I kept the record open at the conclusion of the hearing to enable Claimant's counsel to provide medical records referenced by Dr. Gackle (TR, page 80) and to provide Employer's counsel the opportunity to develop additional medical evidence in response to Dr. Gackle's late-noticed hearing testimony (TR, pages 103 and 104). On June 3, 2003, I received from Claimant's counsel thirteen pages of Mr. Barroza's medical record (several of the pages were out of order and pages 3 and 7 were duplicative) which I now admit as CX 8. On August 22, 2003, I received from Employer's counsel, Dr. Ma's report of July 2003 examination of Mr. Barroza, July 11, 2003 correspondence, and CV. Although in a subsequent letter, Claimant's counsel reported Mr. Barroza was claiming another injury to his neck due to Dr. Ma's manipulations, no specific objection to the admission of the examination report was submitted. As a result, I now admit these documents as EX 15.

⁴TR, pages 13 and 14, 83 to 91, and closing brief, dated October 21, 2003.

On February 9, 1998, while repairing a car that was up on a rack, Mr. Barroza felt a sharp pain between his shoulders that ran up to his neck. He finished work that day. The next morning, Mr. Barroza had more pain in his lower back and neck. Mr. Barroza informed his supervisor of the problem. His neck condition was treated with traction. However, this time, the Employer terminated medical benefits.

On February 15, 2000, Mr. Barroza was repairing a car starter and had to reach around the vehicle's front axle. While twisting, he experienced another sharp sting in his neck. Prior to this incident, his neck had been symptom-free for several months. Mr. Barroza is confused about to whom he reported the injury. The physicians treated the condition as a re-aggravation of his old neck injury. Again, the Employer declined medical benefits.

When Dr. Gackle evaluated Mr. Barroza's condition and medical condition, he concluded that he had a herniated disc at C5-6 with chronic, recurrent, and varying neck pain. Mr. Barroza's neck condition was due to a combination of factors including degenerative joint disease, genetics, age, and the awkward and cramped conditions of his work as a heavy duty auto mechanic. Dr. Gackle does not believe Mr. Barroza is malingering. Instead, he has struggled with long term, episodic neck pain since the initial incident in 1989.

The sole issue is whether Mr. Barroza is entitled to medical benefits for any one of the four injuries. Mr. Barroza seeks medical benefits to help him cope with his chronic and recurrent neck pain associated with his several work-related neck injuries.

Employer⁵

Mr. Barroza worked as a full-time and part-time car mechanic for the Navy Exchange at Barbers Point from 1972 through February 2000, when he accepted a voluntary retirement. The present case involves his claim for medical benefits for his neck due to four alleged injuries. In addressing the four medical benefits claims, the Employer recommends a two step approach. First, the specific injury and its relationship to Mr. Barroza's employment must be determined. Second, entitlement to medical benefits for each established work-related injury must be demonstrated. For diverse reasons, Mr. Barroza has failed to meet his evidentiary burden of proving that the claimed medical benefits are reasonable and necessary for any of the four alleged injuries or their combination.

In October 1989, Mr. Barroza suffered a compensable, work-related injury. The Employer paid temporary partial disability benefits. Mr. Barroza also received medical treatment for a period of time. Within one year, his symptoms were resolved.

When Mr. Barroza awoke on October 18, 1993, he found his neck in an awkward position. Section 20 (a) of the Act provides a rebuttable presumption that an injury is work-related. However, to invoke the presumption, Mr. Barroza must prove that a) he suffered some harm and b) employment conditions existed that could have caused the harm. Since his bed was

⁵TR, pages 12 to 15, 17, 18, and closing brief, dated October 13, 2003.

not a work place and Mr. Barroza failed to identify any work-related incident prior to that morning, Mr. Barroza has failed to prove the second requisite element of the presumption.

Although Mr. Barroza suffered another compensable, work-related injury on February 9, 1998, the injury involved his lower back and not his neck. As a result, any claimed medical treatment for his neck does not relate to the February 1998 low back injury.

Concerning the fourth alleged injury on February 15, 2000, due to several factors, the Employer contests whether any work-related accident was involved. First, no documentary evidence exists that he reported a work-related injury at that time. When he saw a physician the next day, the doctor annotated that Mr. Barroza did not recall any specific traumatic injury. Instead, he reported that he woke up with a stiff neck. Additionally, prior to this claimed injury, Mr. Barroza had been notified of the loss of his job at Barbers Point. Finally, Mr. Barroza may be confusing the details of this claimed injury with the earlier incident in February 1998.

Even if the later three alleged injuries are work-related, a split of medical opinion exists on whether medical treatment is necessary and reasonable. In support of Mr. Barroza's claim, Dr. Gackle believes his underlying degenerative conditions were aggravated and worsened as a result of the alleged cervical injuries. In contrast, Dr. Ma opines that while Mr. Barroza may have experienced temporary exacerbation of his degenerative condition, he has not suffered any permanent worsening or permanent disability. Due to the nature and extent of other evidence in the record, including Mr. Barroza's testimony, Dr. Ma's opinion is more consistent with his intermittent pain presentation than Dr. Gackle's assessment that Mr. Barroza's pain was constant. Notably, after his release from medical care in September of 2000, Mr. Barroza had two normal physical examinations. Dr. Gackle failed to explain how his subsequent examination finding of worsening neck condition was consistent with the normal exams and Mr. Barroza's removal from his work as a mechanic two years earlier. Additionally, since Mr. Barroza acknowledged walking aggravates his condition, his other work as a security guard may have caused the aggravation.

Summary of Evidence

While I have read and considered all the evidence presented, I will only summarize below the information potentially relevant in addressing the issues.

Mr. Steven A. Barroza

Deposition – April 8, 2003
(EX 14)

Mr. Barroza is presently working as a security supervisor with seven employees at an apartment complex. He has worked as a security guard/supervisor at the building for 14 years. As a supervisor, he manages the other employees, patrols, and fills in when someone is not available to patrol. He works Monday through Friday, 1 to 6 in the evening, and is on-call the rest of the time.

Mr. Barroza started working for the Navy Exchange in 1972. For the last 25 years, he was an auto mechanic at the Autoport on the naval air base at Barbers' Point. Fourteen years ago, when he started his second job as a security guard, Mr. Barroza changed his status as auto mechanic from full time to part-time. For the last several years, he has worked Monday through Friday, and usually Saturday, 8 a.m. to noon. His supervisor was Derek. Mr. Barroza was paid a minimum wage plus a commission on the work he accomplished. As an auto mechanic, he performed numerous auto repair and maintenance tasks. The job required long periods of standing and lifting of up to 65 pounds. He retired from the Navy Exchange in March 2001 after the base at Barbers Point and the auto store closed. Mr. Barroza believes he received notice about the store closing in October 2000. About that time, he was given the choice of moving to a full-time auto mechanic position at Pearl Harbor or retiring; working part-time was not an option. Mr. Barber did not believe he could physically handle working full-time again as a mechanic. As a result, he chose retirement and receives a pension from the Navy Exchange.

On February 1, 1989, while replacing a strut on a car, Mr. Barroza reached down to pick up the strut and strained his neck. He felt a crack in the neck. The next morning he went to a doctor and called his supervisor to inform him of the accident. The physician took him off work for about a month and a half. Subsequently, Mr. Barroza returned to work with light duty, working the parts department and writing service orders for several months. He also went through periods of physical therapy. The Navy Exchange provided disability compensation and paid for the medical treatments. About a year after the accident, Mr. Barroza returned to most of his usual physical activities and the symptoms went away completely.

When Mr. Barroza awoke on the morning of October 18, 1993, his neck was bent and he had pain in his neck and left shoulder area. He called his supervisor about the problem and went to a doctor. After the symptoms from the 1989 injury were gone, Mr. Barroza had no problems with neck until the morning of October 1993. He did not recall anything occurring at work immediately preceding the morning he woke up with neck pain. He had been working his regular auto mechanic duties day-to-day, including lifting, without any problems; then, "I just woke up one morning" with the neck pain. He doesn't recall having engaged in any exceptionally strenuous activity. The doctor indicated the problem might be work-related. The insurance company disagreed for awhile and Mr. Barroza became angry about the delay. Eventually, the claim was accepted. He received disability compensation for the period of time that he was off work. He also received about six months of physical therapy. Shortly after finishing physical therapy, Mr. Barroza returned to his regular duties. About the same time, the symptoms from the October 1993 incident eventually went away.

Mr. Barroza only vaguely recalls a lower back injury while removing an automobile starter in February 1998. He may have received medical treatment and compensation but he doesn't remember the duration or any other specifics. He no longer has any back problems; his back is in pretty good condition.

On February 15, 2000, in the later part of the morning, Mr. Barroza was installing a starter on a four-wheel-drive vehicle. Due to limited access, he had to "bend kind of a funny way." At that moment, he felt a bee sting in his neck. Because the sensation was uncomfortable, he stopped and rested for about 15 minutes. When his supervisor, Derek, asked him if he was

going to finish the starter job, Mr. Barroza indicated that he would try. However, when he went back to work, the pain hit him again. Mr. Barroza told his supervisor who then had another mechanic complete the work.

On the same day, Mr. Barroza believes he saw his regular physician, Dr. Yamashita. Yet, when he was shown that the date of the treatment note was February 16, 2000, Mr. Barroza agreed that he saw the doctor the day after the bee sting incident.

Mr. Barroza told the physician that he “was at work and felt something in my neck. I think that was the conversation.” When asked if he recalled telling Dr. Yamashita that there was no specific injury and he just woke up with neck pain, Mr. Barroza replied, “I don’t understand that. It sounds confusing. It sounds like you’re going back to the old injury when I woke up.” When Mr. Barroza was then read Dr. Yamashita’s specific treatment note comment, Mr. Barroza stated, “I don’t remember having that conversation.”

Mr. Barroza further explained that when Dr. Yamashita asked about a specific injury, he thought the doctor was asking about an accident. The day before, in replacing the starter, Mr. Barroza was not involved in a traumatic accident. Instead, he was performing one of his usual tasks. Additionally, during the course of his auto mechanic career, he frequently felt “twinges” in his back and shoulders. So, while he had never experienced a twinge in his neck before February 15, 2000, he didn’t think it was unusual and didn’t tell the physician about it. Later, sometime in April 2000, after he used medication and the pain had somewhat diminished, Mr. Barroza started thinking about what might have caused him to experience neck pain the morning of February 16, 2000. He concluded the bee sting in his neck when working on the vehicle starter the day before must be related to his subsequent neck pain.

Dr. Yamashita referred Mr. Barroza to the occupational health department. Prior to seeing a doctor in that department, based on Dr. Yamashita’s instructions, Mr. Barroza went to the Navy Exchange office at Pearl Harbor and obtained a form for referral to occupational medicine. He filled out his portion of the form and gave it to the doctor. The form should be in the record. Mr. Barroza was treated for about three months.

After a short period off work, Mr. Barroza returned to work in a light duty status at the Navy Exchange retail store. At that store, he checked identification cards and monitored security cameras. Later, he returned to the auto store and continued performing light duty, such as vehicle inspections, until he retired. He doesn’t recall specific dates.

Although Mr. Barroza had not taken any medication the day of his deposition, he had recently begun to experience memory problems, with details fading in and out.

After 2000, a period of time passed where Mr. Barroza did not receive any treatment for his neck because his claim had been declined. During that period, he saw Dr. Yamashita a couple of times for pain medication and tried to cope with the problem himself. Within the last three months, Dr. Gackle has been evaluating his neck condition. After some studies, the physician told him “there was nerve damage in my neck area.” Dr. Gackle has recommended

electronic nerve stimulation, steroid injections, and surgery. Mr. Barroza has refused the surgery option. At present, Mr. Barroza is not receiving any treatment for his neck.

Sometime in late 2002, Mr. Barroza was involved in one incident at home that increased his neck pain quite a bit. Specifically, as a door was closing, he got caught between the door and the door jamb. Afterwards, he went to Dr. Yamashita to obtain some medication.

Presently, Mr. Barroza feels constant neck pain. Depending on his activities, the pain may worsen. In particular, the pain becomes greater if he walks too long or lifts too much. Since his neck is usually tight, he takes medication to “ease it down.” Sometimes, he experiences spasms and his left shoulder becomes achy. He no longer engages in recreational activities such as swimming and running. Mr. Barroza also struggles with occasional headaches and pressure behind his left eye.

Hearing Testimony
(TR, pages 107 to 175)

[Direct examination] Mr. Barroza is 47 years old and a high school graduate. He started working for the Navy Exchange in 1972 in the vending department. Eventually, he moved to the gas station and later started working as an auto mechanic. In that capacity, Mr. Barroza accomplished numerous automotive maintenance tasks including tune-ups, oil changes, and strut replacements. Initially, he was paid by the hour. Some time later, his compensation was based on a commission of 40 to 42% of the money he generated.

Prior to 1989, Mr. Barroza engaged in several recreational activities, such as basketball, swimming, and running. Up to that period, he had never experienced any difficulties with his neck or back.

On February 1, 1989, Mr. Barroza was replacing a strut. While lifting the assembly, he felt a sting or electric shock in his neck. He reported the injury and was placed in physical therapy consisting of massage and traction for about a year. He also did home exercises. According to Mr. Barroza, “After a while it got pretty good, yeah. I was okay.”

On October 18, 1993, Mr. Barroza woke up with his neck cocked off to the side and locked. He couldn’t move his neck and his shoulder hurt. Through heat treatment and massage, Dr. Terry Vernoy was able to straighten out the neck. Mr. Barroza believes he probably told the physician about his earlier neck injury. He doesn’t recall whether he had been at work in days just before the incident. After a period of time, his neck “got better” and he went back to work, while continuing home exercises.

On February 9, 1998, while attempting to remove a starter from a vehicle on a rack, Mr. Barroza reached around, twisted, and “felt the pull” in his lower back that went up to about the top of his shoulder blades, which he considers as part of his neck. He stopped work for a while and then finished the work day. During this period, his back hurt a bit. The next morning, the pain was much stronger and he called in sick and told his supervisor about the accident. He “was feeling the pain the worst” in his low back on the left side. Mr. Barroza saw a physician at

Kaiser hospital because he had changed health plans. The doctor referred him to occupational therapy. His regular treating physician at Kaiser is Dr. Yamashita. Mr. Barroza's lower back was treated with heat and additional exercises. He also received traction therapy for his shoulder blades and neck. The total treatment lasted about three months. At the end, he was informed that he suffered a strained muscle and advised to continue with exercises, such as leg lifts, to stretch the muscles. The pain got better after the therapy and he went back to work.

After 1993, his medical treatment stopped when he was informed the insurance had stopped payments. As a result, he was told to continue his home exercise and go back to work, which he did. Although he was able to do his work, after a stressful day, Mr. Barroza would use home traction for about 20 minutes. "Other than that, I did pretty good." In 1998, the treatments were again stopped when workers' compensation had reached its limit and Mr. Barroza returned to work.

As a second job, Mr. Barroza is the security chief at an apartment complex. He trains all new security officers and fills in when someone is absent. His present hours are 1 to 6 in the evening. He walks around the complex to demonstrate the presence of security. "It's not a hard job, believe me." It involves more walking than anything else. The area is hilly. He has never been injured in that job.

When Barbers Point began closing down, the business was not as good. So, he went to part-time. In the meantime, he was offered the security chief job and went full-time at the apartment complex. The change occurred around 1992. At the base, his shift was 8 a.m. to 12 p.m. and he continued to work on a commission basis.

On February 15, 2000, he was working in a new shop on base as a part-time mechanic. While changing the starter on a four-wheel-drive vehicle, he was reaching over the front axle and twisted his body into a "weird, really strange position." While in that position, he felt the sting in his neck again in the same area as the 1989 incident. In the few months prior to that day, he was not having any problems with his neck or back. When he felt the sting, he stopped working, sat down, and smoked a cigarette. When he tried to reach back up to put the starter in, "boom, it stung again." He told himself, "No, that's it; I can't do this." So, another mechanic finished the job. Mr. Barroza went home at noon. Mr. Barroza believes he told Mr. Kevin Tubania about the incident. In his earlier deposition, Mr. Barroza had indicated that he told the shop manager, Derek. But, that didn't seem right. After the deposition, he located Derek who told him he had left the shop in January 2000. So, he wasn't the individual and Mr. Barroza is "fuzzy about the whole situation." Another person confirmed Derek's January departure; she did not recall Mr. Barroza's injury.

The next time he was scheduled to work as a mechanic after February 15, 2000, he did not report in. He is pretty sure that he called someone about his neck problem and told the person that he was going to the doctor and not coming into work. Mr. Barroza saw Dr. Yamashita the next morning. He acknowledges that Dr. Yamashita annotated at the time that Mr. Barroza stated he woke up with neck stiffness and may have re-aggravated an old injury; he did not recall any specific injury. At that time, his neck was stinging and he was concentrating on the pain. He did not tell Dr. Yamashita about his neck pain when replacing the vehicle

starter. When asked why he didn't inform Dr. Yamashita, Mr. Barroza answered, "I don't know." He probably told Dr. Yamashita that he was experiencing symptoms similar to his previous neck injury. Mr. Barroza wasn't sure if he had "hurt my old injury." Dr. Yamashita treated the problem as an occupational injury. When Mr. Barroza saw Dr. Fryberg, he expressed his belief that his old 1989 injury had been re-aggravated in mid-February 2000.

Mr. Barroza went to the Navy Exchange office to obtain some paperwork for the doctor. After he gave the physician the documents, he never saw the papers again. He continued to receive medical treatment for some time and then Dr. Fryberg informed him that the insurance company was denying his claim. So, they resubmitted the claim two more times. The claim was never accepted.

None of what happened to him on February 15, 2000 was due to his security job.

[Cross examination] After the treatment for his February 1989 injury, Mr. Barroza felt pretty good. His symptoms went away completely and he returned to some of his recreational activities, such as running and swimming. However, he stopped playing basketball.

After the treatments for the 1993 locked neck, Mr. Barroza's symptoms went away and he got better. The medical treatments ended because the doctors stated the insurance had stopped. Mr. Barroza believed he needed more treatments, but he got a little better anyway. His symptoms got better.

In his deposition, Mr. Barroza did not recall the 1998 injury because "pieces were missing." Consequently, after the deposition, he called a few people. Kevin recalled that Mr. Barroza had something about his neck, but didn't remember the specifics. After the injury, he went to his treating physician first who then referred him to occupational therapy. The pain associated with the injury was in his low back up to his shoulder blades. Eventually, the symptoms went away and Mr. Barroza became more mobile. He worked as a part-time auto mechanic from 1998 to February 2000 without restrictions.

In February 2000, when he was unable to continue work due to his injury after his short break, Mr. Barroza believed his neck was telling him that he could not do the work anymore. When he woke up the next morning, he had stinging neck pain and went to Dr. Yamashita. The pain must have been worse because Mr. Barroza only goes to the doctor when he is experiencing extreme pain. With Dr. Yamashita, he was focused on getting relief from the pain and "didn't think to tell him" about the stinging pain at work. The doctor gave him some pills, which within a day took away a lot of the pain. Mr. Barroza explained that he informed a doctor in 1998 about his problem at work but did not tell Dr. Yamashita about the same type of incident in 2000 because with Dr. Yamashita he was just concentrating on relieving the pain – "I'm not going to focus on trying to figure out what I did the day before." When Mr. Barroza later saw Dr. Fryberg in occupational medicine, he also did not tell her about the stinging neck pain at work. He thought it was a "doctor-doctor thing."

He further explained that after the medication began to alleviate his pain, Mr. Barroza "started wondering" what could have caused the neck pain. That's when he concluded the

stinging pain at work the day before was the cause. As a result, he signed a form claiming the February 15, 2000 work-related incident caused his neck problem.

Mr. Barroza doesn't recall how often during his employment with the Navy Exchange he experienced stinging neck pain. Besides the February 2000 problem, the only other time neck pain caused him to stop work was the 1989 incident.

Kevin recalled Mr. Barroza had hurt his back and neck at work. However, when Mr. Barroza asked Kevin to contact his lawyer about his recollection, he "backed off" and didn't want to get involved.

During his last visit with Dr. Fryberg in September 2000, she told Mr. Barroza "there was not too much she could do anymore" for his injury but he should return any time he needed something. Mr. Barroza didn't return to occupational medicine until he saw Dr. Gackle in 2002.

Mr. Barroza recalls receiving notice that his position at Barbers Point was going to be terminated due to the base closure. He doesn't remember the date of the notice. He was given the option to transfer to Pearl Harbor full-time. Mr. Barroza didn't exercise that option because he didn't think his "overall body" could do eight hours of mechanic work. He was "just tired." Because the notice document is dated January 2000, which is prior to the February 2000 neck problem, Mr. Barroza believes he declined the transfer option due to the condition of his whole body, rather than just his neck. Also, he wasn't making much money as a mechanic. So, he decided to retire from the Navy Exchange in January 2000. In terms of time constraints, Mr. Barroza believes he could have worked both his mechanic and security jobs full-time. His security work could have been done at night.

After the neck sting injury, Mr. Barroza returned to work at the garage in light duty, checking inspections. In his deposition, Mr. Barroza stated he continued to work at light duty for a year after the neck sting injury. However, his recollection is "fuzzy." After being presented with his Navy Exchange pay records showing he only worked one day after February 15, 2000 and retired effective March 1, 2000, Mr. Barroza agreed that he retired shortly after the stinging neck injury. He was "very confused" and didn't remember specific dates and times.

Depending on the duration, walking can increase his neck symptoms. Walking is the primary activity of his security guard position, which he was performing full-time in February 2000 through the fall of 2002.

After receiving the forms from the Navy Exchange to report the February 15, 2000 incident, Mr. Barroza gave the documents to the doctors at Kaiser and never saw them again. For the earlier three incidents, Mr. Barroza filled out the forms himself. He believed Kaiser had a different system.

[Re-direct examination] Mr. Barroza received treatment for his 1993 injury under a different health plan.

Because the insurance company had denied his claim, Mr. Barroza did not believe he could return to occupational medicine after September 2000.

In the position termination notice, the Navy Exchange did not give Mr. Barroza a third option of working just part-time at Pearl Harbor. He would have accepted a transfer to a part-time mechanic job.

Normally, when Mr. Barroza had an injury at work and was going to miss a day of work, he would call and inform his supervisor or the person who answered the phone.

Dr. Ronald H. Gackle

Treatment Notes
(CX 8)

On April 20, 1998, Dr. Gackle evaluated Mr. Barroza after he reported no improvement in his lumbosacral muscle strain. Because Mr. Barroza experienced minimal improvement after physical therapy sessions, Dr. Gackle prescribed additional rehabilitation therapy which had apparently been delayed. The physician warned that failure to provide additional treatment would prolong Mr. Barroza's recovery and corresponding return to work due to associated de-conditioning. Dr. Gackle refilled his medications and kept Mr. Barroza on limited duty, which apparently was not available.

On November 20, 2002, Dr. Gackle evaluated Mr. Barroza who was presently working as a security supervisor but had been employed as an auto mechanic with the Navy Exchange. The focus of his inquiry was a neck injury that occurred on February 15, 2000 while Mr. Barroza was still working as a mechanic. Since the injury, he had been treated by Dr. Fryberg and Dr. Yamashita. Mr. Barroza stated, "the injury actually preceded the 2/15/00 incident, dating back as far as 1992 with an aggravation in 1995." Mr. Barroza was experiencing "quite bothersome" left-sided neck pain and occasional tingling in his left fingers. No medical records were yet available for review. Dr. Gackle noted "somewhat decreased" cervical range of motion, a tilt to the left, and left-sided paracervical muscle tenderness. No muscle spasms were noted. Dr. Gackle diagnosed chronic neck pain with multiple injuries.

On January 17, 2003, Mr. Barroza presented with constant and worsening left-sided neck pain. Dr. Gackle observed Mr. Barroza's stiff neck and reached the same diagnosis. He permitted Mr. Barroza to remain on full duty.

On February 7, 2003, Dr. Gackle conducted another evaluation. Mr. Barroza reported a neck pain level of 7 out of 10. He continued to work full-time. The left-sided paracervical muscles were tender and cervical range of motion was decreased. Dr. Gackle's diagnosis remained the same.

On February 9, 2003, Dr. Gackle summarized Mr. Barroza's case. Mr. Barroza sustained an injury to his neck, left shoulder, and upper back on February 1, 1989. He was "treated by Dr. Terry Vernoy for this injury from 11/4/93 through 5/4/94." On February 16, 2000, Mr. Barroza

informed Dr. Yamashita that he had awoke with a stiff neck and believed the problem was due to his old injury. Dr. Fryberg and Dr. Lau in occupational medicine subsequently provided treatment. A May 2000 MRI indicated the presence of a disc herniation at C6-7. Following his three evaluations of Mr. Barroza in the fall of 2002 and spring of 2003, Dr. Gackle noted he continues to have pain complaints on the left side of his neck, radiating towards the left shoulder. Dr. Gackle recommended cervical traction and physical therapy. He would also consider acupuncture, electrical nerve stimulation, and epidural injections.

On March 10, 2003, Dr. Gackle discussed his proposed treatment plan with Mr. Barroza who continued to have left-sided neck pain. The physical examination was unchanged and the diagnosis remained the same.

On May 2, 2003, Mr. Barroza reported persistent, severe neck pain. He also had experienced dizziness during his deposition. At the same time, Mr. Barroza continued to work full-time. The cervical range of motion was “markedly decreased.” Dr. Gackle also found “marked tenderness” in the paracervical musculature. His diagnosis remained unchanged.

Hearing Testimony
(TR, pages 17 to 80)

[Direct examination] Dr. Gackle is the chief of the occupational medicine department of Kaiser Permanente Hospital (“Kaiser”) and board certified in occupational medicine.⁶ Approximately 60 percent of his professional time involves the treatment of patients; the remaining portion of his work relates to administrative tasks. His department treats individuals who have been injured at work. At the same time, nearly 90 percent of these patients also have medical coverage under Kaiser’s health plan, which means they may receive treatment while waiting for approval from the workers’ compensation program.

Dr. Gackle is aware that Mr. Barroza experienced a muscle pull in his upper back while removing an automobile strut in February 1989. The Kaiser medical records indicate he received treatment for this injury. Dr. Gackle also understands that Mr. Barroza reported: a pain in his shoulder after waking in October 1993, a lower back strain in February 1998 with pain running from his lower back to neck, and neck and back pain in February 2000. Dr. Gackle knows Mr. Barroza worked as an automobile mechanic for 27 years and is familiar with the work involved with automobile maintenance service. Mr. Barroza’s work required him to lift and install car parts and make repairs in cramped areas. These confined areas forced Mr. Barroza to assume awkward positions.

On February 16, 2000, Mr. Barroza visited Dr. James Yamashita, who is one of the Kaiser health plan physicians. Mr. Barroza reported waking with a stiff neck and was uncertain whether he had re-aggravated an old injury. No specific injury was mentioned. Apparently believing the problem was work-related, Dr. Yamashita referred Mr. Barroza to occupational medicine. In April 2000, Dr. Fryberg, an occupational physician, saw Mr. Barroza. At that time, the physician annotated that Mr. Barroza had suffered an injury in February 1989 and believed his present condition was a re-aggravation of that old injury. He presented no specific new

⁶I accepted Dr. Gackle as an expert in occupational medicine (TR, page 21).

injury. In July 2000, Dr. Fryberg referenced C6-7 radiculopathy, which is a cervical condition. Mr. Barroza's treatment for a neck condition continued in September 2000.

An MRI was conducted on May 2000 and disclosed a disc herniation at C6-7 with mild foraminal stenosis,⁷ which means the disc is at least partially obstructing the nerve opening in that cervical vertebrae. The MRI also showed minimal disc bulges at C3-4 and C5-6, without corresponding stenosis.

Based on the MRI results, Dr. Lau, another occupational physician, diagnosed C6-7 disc herniation.

In April 1998, Dr. Gackle actually treated Mr. Barroza once after the February 1998 injury when he reported twisting and straining the right side of his lower back while pulling a truck starter. The physician treated him for a low back condition and not the neck. The visit occurred three months after the injury and Mr. Barroza's "primary concern" was his back. So, he did not treat the neck. Dr. Gackle continued the light duty restriction. Light duty is inconsistent with his work as an auto mechanic.

He did not see Mr. Barroza again until late in 2002. At that time, Mr. Barroza asked Dr. Gackle for another evaluation for recurrent neck pain. After a physical examination, Dr. Gackle diagnosed chronic, recurrent left-side neck pain. Then, Dr. Gackle reviewed Mr. Barroza's medical treatment record. In a February 2003 report, Dr. Gackle concluded Mr. Barroza "had a C5-6 herniated disc and chronic recurrent neck pain that went back many, many years." He had a disc bulge in that area of the neck. When Dr. Gackle saw Mr. Barroza again in February 2003, he "still had a lot of neck pain" and "stiffness in the neck." Upon examination, Dr. Gackle noted some muscle spasms on the left-hand side of Mr. Barroza's neck. In terms of posture, he appeared to have neck pain. Mr. Barroza did not want to pursue "surgical options."

Dr. Gackle understands that Mr. Barroza also works as a security guard which would not be as strenuous as auto mechanic work.

In summary, Mr. Barroza "has multiple levels of wear and tear, degenerative joint disease, and specifically one focused lesion at C5-6, that is more representative than other levels of pathology." His clinical presentation correlated with the C5-6 lesion. The physician explained that Mr. Barroza's degenerative joint disease was partially affected by three factors: genetics, age, and work activity. Dr. Gackle believes Mr. Barroza's long-term work as a car mechanic accelerated or worsened his neck condition. Because he also works on cars, Dr. Gackle is familiar with that activity.

In terms of medical treatments, besides pain medicine, Dr. Gackle suggests cortisone injections as possible future treatments for Mr. Barroza's neck condition. Mr. Barroza is not interested in surgical intervention. His prognosis is "guarded."

[Cross examination] Dr. Gackle did not review the medical record from 1989; he did see the record from 1993. The 1998 medical record contains no reference to a neck injury.

⁷Narrowing of the vertebral canal. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 1576 (28th ed. 1994).

According to the February 2000 medical record, Mr. Barroza awoke with a neck problem. The record contains no report of a work incident or accident involving the removal of a car starter.

EMG nerve studies were normal. Dr. Fryberg's objective physical examination produced normal results. At the same time, Dr. Fryberg believed his condition represented an aggravation of the initial neck injury. Mr. Barroza appears to have been off work on February 16, 2000. The medical record entries for May, June, July, and September show full duty.

After 2000, the medical record contains no opinion that Mr. Barroza needed medical treatment for the 1993 or 1998 incidents. Instead, the documents show the treatment related to the "most recent accepted date of injury" in February 2000.

Mr. Barroza's neck problem has waxed and waned since 1989. Sometimes the condition was worse; at other times, Mr. Barroza was able to tolerate the problem. Walking could cause cervical spine complications. Dr. Gackle is aware that Mr. Barroza's security guard work involves walking.

According to Dr. Gackle, because Mr. Barroza's neck problem never completely went away, the medical treatment he has provided the last five months and future treatments represent reasonable and necessary care for the industrial injury of 1989.

Mr. Barroza's years as an auto mechanic have taken their toll. Dr. Gackle did not tell Mr. Barroza that he had nerve damage. The doctor may have told him that the MRI showed a bulging disc where the nerve came out. No objective test exists indicating a worsening of the cervical spine's condition since 2000; Dr. Gackle is relying on subjective symptoms and the medical record. In his most recent examination of Mr. Barroza's neck range of motion, Dr. Gackle found a stiffer condition than Dr. Fryberg's 2000 observations. Dr. Gackle believes the projection of the disc is irritating the nerve. Mr. Barroza's neck condition is the eventual outcome of his years of activity, degenerative disease, and aging.

[Re-direct examination] Dr. Gackle has no reason to believe Mr. Barroza is malingering or being deceptive. He has not requested excessive treatment. Dr. Gackle does not believe Mr. Barroza has been pain free for 10 to 12 years even if he stated he experienced periods of no pain.

[Re-cross examination] Dr. Gackle agreed that age and genetics can become symptomatic without any precipitating factor.

Ms. Veronica M. Manz – Hearing Testimony
(TR, pages 176 to 194)

[Direct examination] Ms. Manz has been a Navy Exchange human resources manager for over four years. Part of her duties have included managing human resources and handling workers' compensation claims for stores at Pearl Harbor and Barbers Point.

Barbers Point closed down in March 2000. As part of that process, Mr. Barroza was notified at the end of January 2000 that his employment position at Barbers Point was being

terminated. Due to his seniority, Mr. Barroza had “bumping rights” to a full-time position in the same job category. Mr. Barroza had to exercise those rights within five days of receipt of the hand-delivered notice.

Around the end of February 2000, sometime after February 27th, the termination date of Mr. Barroza’s employment, he talked to one of Ms. Manz’s employees about an old injury. He asked how he could obtain medical attention based on his 1989 injury. The employee gave Mr. Barroza the necessary paperwork. When the employee subsequently contacted the Navy Exchange workers’ compensation specialist, she was informed by e-mail that Mr. Barroza’s medicals were barred due to the statute of limitations. Mr. Barroza was informed of that response. He never provided any subsequent documents or medical slips to Ms. Manz’s office.

[Cross examination] Ms. Manz is not sure how the position termination notice was actually presented to Mr. Barroza. At least 109 of such notices were hand delivered. She doesn’t have possession of the original of the notice to Mr. Barroza, which would contain his signature acknowledging receipt. Once he separated, the original was sent to the records center in St. Louis.

Ms. Manz knows Mr. Barroza came to get the injury documents after February 27th because her office had to sponsor him onto the navy base. He lost his personnel and vehicle passes to the base when he separated on February 27, 2000.

Dr. Terry A. Vernoy – Treatment Notes⁸
(CX 3)

Based on a referral from Dr. Inada, Dr. Vernoy evaluated Mr. Barroza on November 4, 1993. On February 1, 1989, Mr. Barroza suffered an injury to his neck while lifting at work. Since then his neck pain had been on and off. He suffered a re-injury at work on October 18, 1993. At that time, he experienced numbness and tingling in his left upper extremity. While the numbness and tingling had subsided, Mr. Barroza still had stiffness and left-sided neck and shoulder pain extending down to his mid-back. Upon physical examination, Dr. Vernoy noted a left head tilt and left trapezial muscle⁹ spasm from the base of the skull out to the shoulder when Mr. Barroza moved his head side-to-side. A cervical spine x-ray showed “loss of the normal lordosis¹⁰ secondary to the muscle spasm of the cervical spine with neural foraminal impingement of the C2-3 neural foraminal on the left side.” Dr. Vernoy diagnosed cervical impingement of C2-3 causing trapezial muscle pain with radiating symptoms to the medial border of the scapula. The physician restricted Mr. Barroza from heavy duty. He also prescribed pain and muscle relaxing medication and referred Mr. Barroza to physical therapy.

⁸Dr. Ma’s medical record summary also describes Dr. Vernoy’s 1989/1990 treatment of Mr. Barroza, *see* page 19 of this opinion.

⁹The outer most, upper shoulder muscle group. DORLAND’S ILLUSTRATED MEDICAL DICTIONARY 1069 (28th ed. 1994).

¹⁰Curvature of the spine. DORLAND’S ILLUSTRATED MEDICAL DICTIONARY 960 (28th ed. 1994).

On November 8, 1993, Mr. Barroza was evaluated by a physical therapist. Mr. Barroza reported that he awoke on October 18, 1993 with needle-like pain and stiffness in his neck. He had suffered a previous left neck injury in February 1989. At the present time, Mr. Barroza was experiencing tingling and achy pain and stiffness from the left side of his neck through the mid-back region. His pain level ranged from 4 to 9, out of 10. The pain was worse in the evenings. The therapist observed muscle tightness at the left upper trapezius. The left rotation of his neck was restricted at C5, C6, and C7. An x-ray showed impingement of the cervical spine. The physical therapist diagnosed cervical impingement with strain and recommended a four to six week course of physical therapy. Dr. Vernoy approved this treatment plan.

During a follow-up evaluation with Dr. Vernoy on November 18, 1993, Mr. Barroza reported improvement with residual discomfort due to the physical therapy. On physical examination, Dr. Vernoy found improved range of neck motion and no muscle spasms. Dr. Vernoy diagnosed improved symptoms of left shoulder and upper back pain due to cervical impingement.

On December 2, 1993, Mr. Barroza reported gradual improvement in his neck and shoulder pain. However, he presented new complaints of blurred vision and occasional nausea. On examination, his vision was intact and the neck range of motion was good. Dr. Vernoy encouraged Mr. Barroza to see an ophthalmologist. Dr. Vernoy did not believe the vision issue was connected to the neck problem. Dr. Vernoy indicated Mr. Barroza should remain out of work.

On December 10, 1993, the physical therapist noted continued neuromuscular tightness on the left side of the neck. Mr. Barroza was still experiencing shooting neck pain but the pain level had diminished. The physical therapist suggested continued therapy into January, which Dr. Vernoy approved.

On December 16, 1993, Mr. Barroza reported that he had been prescribed eyeglasses. He also indicated that a vertebral artery evaluation was normal. Dr. Vernoy found his condition unchanged and annotated that his employer indicated light duty was available. The physician approved Mr. Barroza's return to work at light duty on December 20, 1993.

A December 30, 1993 check revealed improvement in the neck and shoulder pain. Mr. Barroza had been able to tolerate light duty; although, he still experienced some discomfort. Dr. Vernoy prescribed reduced physical therapy.

On January 20, 1994, Mr. Barroza reported that an MRI ordered by his regular physician was normal. His pain symptoms continued to improve. Physical therapy had stopped. While he tolerated light duty, Mr. Barroza believed he was still not ready to resume his regular job. Dr. Vernoy noted he could move his neck "much more easily." The doctor encouraged Mr. Barroza to continue with his home exercises.

A February 10, 1994 evaluation showed little change in Mr. Barroza's condition. He tolerated light duty but still had discomfort, especially when lying in an awkward position.

Finally, on March 24, 1994, Mr. Barroza reported continued gradual improvement in his condition and expressed a desire to return to his regular work. Dr. Vernoy found “excellent” range of neck motion with no guarding. The physician approved Mr. Barroza’s return to regular work without restrictions.

Dr. Vern Sasaki and Dr. John M. Sandor – Treatment Notes
(EX 7)

On February 10, 1998, Dr. Sasaki examined Mr. Barroza who had a past history “pertinent for work-related neck injury.” The day before the exam, February 9, 1998, Mr. Barroza had injured his low back working on a car. While pulling a starter from a Chevy Blazer, he twisted, pulled, and strained the right side of his back. He had to take off work the rest of the day due to worsening back pain, stiffness, and occasional tingling down the back of his right leg. At the time of the visit, he was experiencing increasing pain and stiffness in his low back on the right side. He no longer had a tingling sensation and was not in acute distress. Upon examination, Dr. Sasaki noted tenderness to palpation to the left paraspinal musculature at L4 through S1, with mild to moderate spasms. The remaining portion of the exam was normal. Dr. Sasaki diagnosed lumbosacral sprain with moderate spasm. He prescribed moist heat and medication. Mr. Barroza was placed off duty through February 12, 1998 and permitted to return to light duty, with lifting, standing, and sitting restrictions.

On May 11, 1998, Mr. Barroza informed Dr. Sandor that his pain was not too bad. Although his back from L1 to L5 was painful in the morning, he received pain relief walking. He was tolerating desk work but was anxious to return to his regular job. The physical examination was normal. Dr. Sandor diagnosed “resolved lumbosacral sprain” and returned Mr. Barroza to full duty, with follow-on medical visits only as necessary.

Dr. James H. Yamashita – Treatment Notes
(CX 4, CX 5, and EX 8)

On February 16, 2000, Mr. Barroza presented with a complaint of neck pain. He was not certain if he re-aggravated an old injury. Mr. Barroza “recalls no specific injury.” Instead, he woke up with a stiff neck. Upon physical examination, Dr. Yamashita noted decreased range of motion with tenderness and tightness in the paracervical muscles and trapezius. Dr. Yamashita diagnosed paracervical muscle strain with some spasms. He provided a work slip for February 16, 2000, prescribed medication, and referred Mr. Barroza to occupational medicine.

Dr. Jane Fryberg – Treatment Notes
(CX 4, CX 5, and EX 8)

On April 13, 2000, Dr. Fryberg examined Mr. Barroza, who was a retired auto mechanic and had a neck injury in 1989. According to Dr. Fryberg, Mr. Barroza “thinks he had a re-aggravation on February 15, 2000, although he states no specific new mode of injury.” Mr. Barroza complained about tingling pain in the back of his neck. An old x-ray had revealed impingement at C2-3. During her examination, Dr. Fryberg noted decreased range of motion and tenderness in the paracervical and trapezius muscles. She found no marked tenderness in the

cervical spine. The physician noted the absence of medical records from other clinics. Dr. Fryberg diagnosed C2-3 impingement and a cervical strain “which will be considered aggravation of his initial injury at this time until further information is obtained.” She prescribed medication, physical therapy and approved Mr. Barroza’s return to work the next day.

On May 2, 2000, a cervical MRI showed a left paracentral disc herniation at C6-7 with mild left neural foraminal narrowing and no spinal stenosis. Minimal disc bulges were present at C3-4 and C5-6 with neither foraminal nor spinal stenosis.

During a May 4, 2000 visit, Dr. Fryberg reviewed the recent MRI with Mr. Barroza. His neck range of motion was good and there was no sign of cervical radiculopathy. She found some tenderness at C4, C5, C6, and C7. Mr. Barroza was scheduled for physical therapy. Dr. Fryberg diagnosed C6-7 herniation and disc bulges at C3-4 and C5-6.

Between June 5 and June 28, 2000, Mr. Barroza received several physical therapy treatments.

On July 18, 2000, Mr. Barroza still complained about radiating pain in his right arm. An EMG study was normal. Mr. Barroza had good cervical range of motion with no noted muscle tenderness. Dr. Fryberg diagnosed C6-7 radiculopathy. She kept Mr. Barroza on regular duty but recommended a functional evaluation test and a work hardening program.

On September 22, 2000, Mr. Barroza, who was a security guard, returned for a prescription refill. The physical examination was essentially normal. His cervical muscle tone and strength were normal. Dr. Fryberg diagnosed “old” C6-7 radiculopathy. She observed that the insurance company had denied Mr. Barroza’s claim and did not authorize any additional tests.

Dr. Chuen P. Lau – Treatment Note
(CX 4, CX 5, and EX 8)

On June 14, 2000, Dr. Lau evaluated Mr. Barroza for recurrent left-sided neck pain and intermittent radiating pain in the upper left extremity. Mr. Barroza had retired from the Navy Exchange on March 1, 2000 but still worked as a security guard. A recent MRI showed a C6-7 disc herniation. Mr. Barroza was in no acute distress. He had full range of cervical motion and normal strength in the upper extremities. Dr. Lau diagnosed C6-7 disc herniation and ordered an EMG study of the left upper extremity and neck. He continued Mr. Barroza on regular duty. The subsequent EMG found no evidence of left cervical radiculopathy.

Dr. Gabriel W.C. Ma
(EX 15)

Sometime prior to July 1, 2003, Dr. Ma, a board certified orthopedic surgeon, reviewed Mr. Barroza’s medical record. In his subsequent report, dated July 8, 2003, Dr. Ma highlighted several aspects of the record relating to each of the four injury events in this case.

After experiencing a sensation in his upper back while lifting a strut in February 1989, Mr. Barroza was treated by Dr. Inada who diagnosed neck, back and shoulder strain. A cervical x-ray showed narrowing of the C4-5 foramen. Dr. Inada released Mr. Barroza to light duty about a week after the injury; he was returned to full duty on March 17, 1989. Meanwhile, Dr. Vernoy continued treatment. A July 13, 1989 cervical CT scan produced no evidence of disc protrusion at C4-5, C5-6, and C6-7; additionally, no nerve impingement was discovered. Between October 1989 and February 1990, Dr. Vernoy provided additional treatment and recommended physical therapy. About a year after the injury, Mr. Barroza reported full recovery.

Dr. Vernoy also treated Mr. Barroza after he awoke in October 1993 with left side neck and shoulder pain. A cervical x-ray revealed left-sided neural impingement at C2-3. Several months later, Dr. Vernoy released Mr. Barroza to his regular duties. Mr. Barroza stated he achieved full recovery.

In February 1998, Mr. Barroza twisted his back at work and suffered right-sided back pain. He received several months of physical therapy and eventually returned to his regular duties. In Dr. Ma's opinion, this injury was unrelated to the 1989 incident.

Finally, on February 15, 2000, Mr. Barroza experienced neck discomfort but did not report a work-related incident until March or April 2000. Dr. Yamashita diagnosed a cervical strain. Dr. Fryberg continued treatment, considered a diagnosis of aggravation of the initial injury, and recommended physical therapy. An MRI showed disc herniation at C6-7, with mild foraminal stenosis. An EMG was normal. In September 2000, Dr. Fryberg concluded the herniation was old and released Mr. Barroza. Between September 2000 and the fall of 2002, Mr. Barroza did not seek additional medical treatment. In the fall of 2002, Dr. Gackle began treating Mr. Barroza.

On July 1, 2003, Dr. Ma physically examined Mr. Barroza, who was 46 years old. Dr. Ma confirmed with Mr. Barroza his employment history, consisting of a job as an auto mechanic from about 1972 to March 2000 and work as security guard for several years, and continuing. Mr. Barroza's complaints consisted of slight tightness over his back and left side of the neck and occasional aching pain in his shoulders. According to Mr. Barroza, the physical therapy prescribed by Dr. Gackle had aggravated his neck pain and caused headaches. Upon physical examination, Mr. Barroza was in no apparent distress. He sat straight up and rarely held his head in a stiff manner. No specific trigger points were noted on the neck. Mr. Barroza had a subjective complaint of tightness on the back, left side, and base of his neck. Dr. Ma observed no muscle spasms. Forward flexion was somewhat rigid. Upon lateral flexion, Mr. Barroza reported left side tightness but no severe pain. No problems were noted with lateral rotation of the neck. No low back tenderness was noted and Mr. Barroza had full range of motion in that area.

During the exam, Dr. Ma also obtained three radiographic views of the cervical area. He interpreted the films as "completely normal." The disc spacing appeared to be practically normal for a person of 44 or 45 years of age. The foramina at all levels were normal with no osteophytic encroachment.

Based on his medical record review, physical examination, and the new radiographic evidence, Dr. Ma reached several conclusions. First, Dr. Ma diagnosed “resolved” cervical strain, shoulder strain, and lumbosacral strain. He attributed Mr. Barroza’s current neck muscle tightness to fixation and possibly over-treatment. Second, although Mr. Barroza had “numerous incidence” (sic), he did not suffer any specific injury or trauma. He may have “sustained a minor type of accumulative incidence, as a result of his employment, not only as an auto mechanic, but also for any type of working condition for the general population.” Third, “Dr. Ma found insufficient evidence of any pre-existing, non-industrial condition in, or injury-induced pathology to, Mr. Barroza’s cervical spine. All the objective medical tests and studies, including the most recent radiographic films, were either normal or within normal limits. Essentially, he has a normal cervical spine. Mr. Barroza has suffered temporary exacerbation due to minor physical stress; but none of the incidents has caused a permanent disability. Fourth, Mr. Barroza requires no further medical care or treatment at this time. Any present occasional neck tightness or symptoms of muscular disorder are not due to his past employment or any of the incidents that occurred.

On July 11, 2003, Dr. Ma reviewed Mr. Barroza’s April 2003 deposition and his May 2003 hearing testimony. Dr. Ma found the testimony very confusing and derived no information that would alter his prior conclusions. Dr. Ma also considered Dr. Gackle’s May 2003 hearing testimony. Due to uncertainty and insufficiency in several areas, including history, physical examination, and objective medical tests, Dr. Gackle’s observations did not change Dr. Ma’s assessments.

Notice of Termination
(CX 6)

A January 26, 2000 Notice of Termination advised Mr. Barroza that his employment position at Barbers Point was being terminated due to the base closure. He had bumping rights for a full-time auto mechanic job. Mr. Barroza had to exercise that option within five days of receipt of the notice.

Employment Records
(EX 1, EX 2, EX 3, EX 6, and EX 11 to EX 13)

In a Report of Injury, dated March 16, 1989, the Navy Exchange reported that on February 1, 1989, while working as a mechanic and pulling a strut out of a car, Mr. Barroza felt a muscle pull in his upper back and suffered a back strain. The Navy Exchange authorized medical treatment by Dr. Inada, who was selected by Mr. Barroza. On February 2 and 3, 1989, Mr. Barroza notified the Navy Exchange that he had suffered an injury to the left side of his upper back. Between February 1, 1989 and May 25, 1989, the Navy Exchange paid Mr. Barroza temporary partial disability compensation.

On March 7, 1994, in a Notice of Injury, Mr. Barroza indicated that he suffered a recurrence of shoulder and neck pain on October 18, 1993. He indicated that on February 1, 1989, he suffered a shoulder injury while removing a strut. Then, on October 18, 1993, as he woke up, Mr. Barroza had the same shoulder and neck pain “that I had in 2/1/89.” He requested

medical treatment by Dr. Vernoy. In a Report of Injury, dated March 9, 1994, the Navy Exchange indicated Mr. Barroza lost work due to an injury on October 18, 1993. The Employer became aware of the injury when Mr. Barroza called his supervisor on October 19, 1993 and told him that he woke up in the night of October 18, 1993 with pain on his shoulder. The Navy Exchange authorized medical treatment with Dr. Inada.

On February 19, 1998, Mr. Barroza filed a Notice of Injury stating that on February 9, 1998,¹¹ while removing a vehicle starter he felt a pain in his lower back running up to his neck. He requested medical treatment. In a Report of Injury, dated April 15, 1998, the Navy Exchange noted that on February 10, 1998, Mr. Barroza called his supervisor and told him that the day before, February 9, 1998, while trying to remove a starter from a vehicle, he felt a pain run from his lower back up to his neck. Mr. Barroza lost work due to the injury from February 10, 1998 to April 20, 1998 and received temporary total disability compensation from the Navy Exchange. The Employer also authorized medical treatment with Dr. Sasaki for lower back sprain.

On May 23, 2000, the Navy Exchange reported that Mr. Barroza alleged that he suffered back and neck pain due to an accident on February 15, 2000. The Employer noted no accident was reported by Mr. Barroza and he did not identify a specific mode of a new injury. The Navy Exchange did not authorize medical treatment.

Controversion of Claim – 1994
(EX 5)

On April 14, 1994, the Navy Exchange controverted Mr. Barroza's right to disability compensation for the October 18, 1993 injury. The Employer noted the incident occurred while Mr. Barroza was sleeping and did not involve a work activity.

Compensation Claim and Controversion – 2000
(CX 1, EX 4, and EX 5)

On April 18, 2000, Mr. Barroza filed a disability compensation claim for a strained neck he experienced on February 15, 2000 while lifting in an awkward position as an employee of the Navy Exchange at Barbers Point. He indicted that his supervisor, Dereck, was informed of the injury on the same day. As other employment, Mr. Barroza listed his job as a security guard since 1992. The Navy Exchange controverted the claim on June 3, 2000 since the accident was never reported and causation, scope, and course of employment were questionable.

Informal Conference
(EX10)

During an October 7, 2002 informal conference, Mr. Barroza stated that he injured himself on February 15, 2000 while replacing an automotive starter at work. As he lifted the starter, his neck started to hurt. He turned the work over to Mr. Kevin Tabana and immediately informed his supervisor.

¹¹The form actually states, "February 9, 1996." Based on the other evidence in the record, that date is obviously February 9, 1998.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

Stipulations of Fact

The parties have stipulated to the following facts (TR, pages 82 and 83): On February 1, 1989, an employer-employee relationship existed between the parties. On February 1, 1989, Mr. Barroza reported to his foreman that he felt a muscle pull in his upper back when he lifted a strut out of a car. On February 10, 1998, Mr. Barroza reported to his supervisor that the day before he felt a pain run from his lower back up to his neck when trying to remove a starter from a vehicle.

Issue No. 1 – Work-Related Injuries

To be entitled to medical treatment under Section 7 of the Act, a claimant must establish he has suffered an injury that is work-related. Specifically, Section 2 (2) of the Act, 33 U.S.C. § 902 (2), defines a compensable injury as an accidental injury arising out of and in the course of employment. Consequently, as the first step in resolving Mr. Barroza's claim for medical benefits, I must determine whether he suffered an injury that was related to his employment with the Navy Exchange on each of the four occasions presented in the case. This process in turn involves two elements: injury and causation. That is, Mr. Barroza must establish a specific injury and then demonstrate the injury is work related.

Injury

Adjudication Principles

The term, "injury," is considered to encompass both physical harm and conditions which indicate something has gone wrong within the human frame. *Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968). If something unexpectedly goes wrong within the human frame, whether by lesion or change in any part of the system, which produces harm, pain, or lessens facility of natural use, even if it occurs in the course of usual and ordinary work, a claimant has sustained an accidental injury. *McGuigan v. Washington Metropolitan Area Transit*, 10 BRBS 261, 263 (1979) and *Gardner v. Bath Iron Works Corp.*, 11 BRBS 556, 558 (1979), *aff'd sub. nom.*, *Gardner v. Director, OWCP*, 640 F.2d 1385 (1st Cir. 1981). If an initial medical condition progresses into complications more serious than the original injury, the additional complications represent compensable injuries. *Andras v. Donovan*, 414 F.2d 241 (5th Cir. 1969). An injury may develop over a period of employment and still be considered accidental. *Gencarelle v. General Dynamics Corp.*, 22 BRBS 170 (1989), *aff'd* 892 F.2d 173 (2d Cir. 1989) (synovitis of the knee, an arthritic condition aggravated by repeated bending, stooping, and climbing on the job, may be considered an accidental injury rather than an occupational disease). According to the Benefits Review Board ("Board" or "BRB"), credible complaints of subjective symptoms and pain may be sufficient to establish an injury under the Act. *See Sylvester v. Bethlehem Steel Corp.*, 14 BRBS 234, 236 (1981), *aff'd sub nom.*, *Sylvester v. Director, OWCP*, 681 F.2d 359 (5th Cir. 1982). Finally, a claimant suffers an injury if his employment aggravates a non-work-related, underlying disease or condition to the extent the claimant suffers incapacitating symptoms. *Preziosi v. Controlled Indus.*, 22 BRBS 468 (1989).

Discussion

The preponderance of the evidence clearly establishes that on two occasions, February 1, 1989 and February 9, 1998, Mr. Barroza suffered an injury. On these two days, something went wrong with either his neck or back. Determining the specific characteristics of the October 18, 1993 injury requires the resolution of conflicting evidence. Due to the nature of his claimed injury on February 15, 2000 and the associated circumstances, the central focus in defining this injury involves his physical condition on February 16, 2000, when he visited Dr. Yamashita. Assessing the parameters of that injury also involves evaluating conflicting evidence.

A. February 1, 1989

Through his deposition and hearing testimony, Mr. Barroza presented evidence of a neck injury consisting of a sharp and enduring pain that occurred on February 1, 1989 while removing a car strut. The existence of that injury is corroborated by his documented report of the injury on February 2 and 3, 1989 and the medical record from that period.¹² Based on his treatment of Mr. Barroza right after the incident, Dr. Inada diagnosed a neck, back, and shoulder strain. Although a cervical x-ray showed some narrowing at C4-5, a subsequent CT scan showed no disc protrusion and there was no evidence of any nerve impingement. While Dr. Vernoy also treated Mr. Barroza, the record does not contain his diagnosis. Within one year, all symptoms associated with the neck, back, and shoulder strain had been resolved.

Based on Mr. Barroza's testimony, employment records and medical record, I find that on February 1, 1989, Mr. Barroza suffered a strain to his neck, back and shoulder without any other damage to the cervical area. By February 1990, Mr. Barroza no longer had any difficulty with his neck.

B. October 18, 1993

In a Notice of Injury, dated March 19, 1994, an April 2003 deposition, and his May 2003 hearing testimony, Mr. Barroza described the circumstances of waking up on the morning of October 18, 1993 with a bent, stiff, and painful neck. Less than two weeks later, Dr. Vernoy observed a left tilt to Mr. Barroza's head accompanied by neck stiffness and left-sided neck and shoulder/mid back pain. Upon physical examination, he felt neck muscle spasms on the left side. A physical therapist also observed tightness of Mr. Barroza's neck muscles on the left side and restricted range of motion. Based on an x-ray and his examination, Dr. Vernoy concluded that Mr. Barroza was experiencing muscle pain with radiating symptoms due to a cervical nerve impingement at C2-3. After a prolonged course of treatment including physical therapy that extended into March 1994, Dr. Vernoy found Mr. Barroza's neck range of motion to be excellent. The physician returned Mr. Barroza to regular duty without restriction. Additionally, in a Report of Injury, dated March 9, 1994, the Navy Exchange indicated that Mr. Barroza had notified his supervisor on October 19, 1998 that he had awoken the day before with pain in his shoulder.

¹²As summarized by Dr. Ma during his review of the medical record (EX 15).

The objective physical findings, including physical examination findings of muscle spasms by Dr. Vernoy and the physical therapist, coupled with the Navy Exchange's acknowledgement of Mr. Barroza's notification to his supervisor on October 19, 1993, validate Mr. Barroza's statements that something went wrong with his neck on October 18, 1993. As a result, I find Mr. Barroza suffered another neck injury on October 18, 1993.

Determining the exact characteristics of the October 18, 1993 neck injury beyond pain and muscle spasms is more problematic. Dr. Vernoy also diagnosed cervical nerve involvement due to a 1993 x-ray showing C2-3 neural foraminal impingement. However, in the other medical evidence before me, none of the subsequent radiographic and nerve conduction studies duplicated a finding of C2-3 nerve impingement. This conflict in the medical evidence first becomes notable upon consideration of Dr. Fryberg's initial and subsequent diagnoses in 2000. In her initial evaluation of Mr. Barroza, referencing an "old" x-ray and subject to further evaluation, Dr. Fryberg diagnosed C2-3 impingement with cervical strain, representing an aggravation of Mr. Barroza's 1989 initial injury. However, in the following two months, a cervical MRI did not identify any problem at C2-3 and a nerve conduction test was normal. Specifically, the MRI imaging only identified a left side disc herniation at C6-7 and bulging discs at C3-4 and C4-5; the EMG showed no signs of nerve impingement. After these later two tests, Dr. Fryberg no longer included either C2-3 nerve impingement or aggravation of the initial injury in her diagnosis. Also, significantly, Dr. Ma's 2003 cervical x-rays disclosed no abnormality at C2-3.

In light of the subsequent medical tests showing the absence of either orthopedic or neural deficits at C2-3, a sufficient conflict in the objective medical evidence concerning the condition of C2-3 exists. Due to this stark conflict, I conclude that the preponderance of the medical evidence does not support a finding that Mr. Barroza's neck pain and muscle spasms on October 18, 1993 also involved a C2-3 nerve impingement.

Due to the evidentiary record, I also need to address another characteristic of the October 1993 injury, its endurance. Some evidence exists that Mr. Barroza's neck pain related to the October 18, 1993 incident may have continued past his return to normal duties in the spring of 1994. In particular, at the hearing, upon inquiry about the absence of medical treatment for neck problems between 1994 and 1998, Mr. Barroza testified that he believed he still needed treatments but the insurance company stopped payments. Dr. Gackle also opined that throughout Mr. Barroza's employment, his neck pain periodically waxed and waned.

However, in contrast, other aspects of the record indicate the neck pain from October 1993 was not continuing. First, during the March 1994 examination, Dr. Vernoy noted Mr. Barroza was no longer guarding his neck and the range of motion was "excellent." Based on this assessment, Dr. Vernoy returned Mr. Barroza to regular duty without restrictions. Second, following his review of the medical record and Dr. Vernoy's treatment notes, Dr. Ma concluded the cervical strain had resolved. Third, consistent with Dr. Ma's assessment, in his April 2003 deposition, Mr. Barroza testified that about the time he returned to his regular duties, his symptoms from the October 1993 incident went away. Fourth, a month later, at the May 2003 hearing, he stated that after a period of time following the October 18, 1993 incident, he got better.

Upon consideration of this evidentiary conflict, I consider Dr. Vernoy's last medical report in the spring of 1994, coupled with Dr. Ma's concurrence and Mr. Barroza's testimony that his symptoms were gone by the time he returned to work in the spring 1994 more persuasive. As a result, I find the effects of Mr. Barroza's October 1993 neck problem did not extend beyond March 1994.

In summary, on October 18, 1993, Mr. Barroza suffered neck muscle spasms and pain, without any other involvement of the cervical area. By the end of March 1994, Mr. Barroza no longer had any difficulty with his neck.

C. February 9, 1998

During the initial description of the circumstances of the February 9, 1998 incident in his April 1998 deposition, Mr. Barroza only vaguely recalled that he suffered a low back injury while removing a car starter. A month later, at the hearing, Mr. Barroza recalled further details. On February 9, 1998, while working in an awkward position attempting to remove a starter, Mr. Barroza felt a "pull" in his lower back that went up to the top of his shoulders, which he considers part of his neck. He stopped work for a while and then finished the work day. The next morning, the pain in his left low back was worse; so, he went to a doctor. Most of Mr. Barroza's recollection concerning February 9, 1998 is validated by: a) his nearly contemporaneous report of injury, dated February 19, 1998, b) the Employer's April 15, 1998 acknowledgement that Mr. Barroza informed his supervisor about the incident on the next day, February 10, 1998, and c) the medical record.

On February 10, 1998, Dr. Sasaki treated Mr. Barroza for a low back injury to his right side that he suffered the day before at work pulling a charger from a Chevy Blazer. The physician noted muscle tenderness and spasms at L4-S1 and diagnosed lumbosacral sprain with moderate spasms. On May 11, 1998, another physician, Dr. Sandor, found Mr. Barroza's condition to be normal, diagnosed "resolved" lumbosacral sprain, and returned Mr. Barroza to full duty. Mr. Barroza testified that upon his return to work in 1998, he did not experience any further difficulties with his low back. His symptoms went away completely and he returned to several of his recreational activities.

Mr. Barroza's description of his injury of February 9, 1998 is corroborated by contemporaneous employment reports and the medical records of Dr. Sasaki and Dr. Sandor. Accordingly, based on the preponderance of the probative evidence, I find that on February 9, 1998, Mr. Barroza suffered a muscle sprain to his low back which resolved by May 11, 1998 without additional complications.

D. February 15, 2000

Mr. Barroza claims that on February 15, 2000 he felt a momentary sharp pain in his neck while removing an automotive starter. The next day, February 16, 2000, Mr. Barroza saw Dr. Yamashita with a complaint of neck pain. Due to circumstances to be discussed in greater detail under the issue of causation, a significant issue exists on whether Mr. Barroza suffered an injury on the claimed date of February 15, 2000. Nevertheless, for the reasons set out below, I do

believe that on February 16, 2000, something was wrong with Mr. Barroza's neck. At this point in my evaluation, I will simply address the nature of that injury as it existed on February 16, 2000.

On February 16, 2000, upon examination, Dr. Yamashita noted decreased range of Mr. Barroza's neck motion with tenderness and tightness in the paracervical muscles. About two months later, Dr. Fryberg observed the same symptoms, with no signs of cervical radiculopathy. Initially, based on an "old" x-ray, she diagnosed C2-3 impingement with cervical strain. Subsequently, a May 2000 MRI showed C6-7 disc herniation with mild left foraminal narrowing, and discs bulging at C3-4 and C5-6. About that time, the physician changed her diagnosis to C6-7 disc herniation. Later, although an EMG was normal, and apparently based on Mr. Barroza's complaint of radiating pain, Dr. Fryberg added radiculopathy to the diagnosis. On September 22, 2000, Dr. Fryberg annotated the cervical muscle tone and strength were normal. In June 2000, Dr. Lau also examined Mr. Barroza and diagnosed C6-7 disc herniation; he ordered an EMG which came back normal. A little over two years later, in November 2002, Dr. Gackle evaluated Mr. Barroza's cervical condition and found decreased range of motion and left-sided muscle tenderness. He initially diagnosed chronic neck pain. At the hearing, after summarizing the contents of the medical record from 2000, including the 2000 MRI showing disc herniation and bulges, Dr. Gackle also concluded Mr. Barroza had a C5-6 lesion with continued complaints of radiating pain in the left neck and shoulder. Over the course of several visits, through May 2, 2003, Mr. Barroza's symptoms remained the same. Later, when Dr. Ma examined Mr. Barroza in July 2003, he noted some subjective complaints of cervical muscle tightness and interpreted a new series of cervical x-rays as normal for disc spacing for Mr. Barroza's age. The physician found no evidence of injury or trauma to Mr. Barroza's neck.

The treatment notes of Dr. Yamashita establish that on February 16, 2000 Mr. Barroza had suffered some harm to his neck as demonstrated by muscle tenderness, tightness and decreased range of motion. However, once again, determining all the characteristics of Mr. Barroza's February 16, 2000 injury is problematic due to the conflict in medical opinion in three areas: disc herniation/lesion, radiculopathy, and continuing pain.

Dr. Fryberg and Dr. Lau believed Mr. Barroza's neck problem included a disc herniation at C6-7. Dr. Gackle diagnosed a focused C5-6 lesion. Apparently disagreeing, Dr. Ma found the objective medical tests to be normal or within near-normal limits.

In evaluating this conflict in medical opinion, I first assess the probative value of the medical opinions in terms of documentation and reasoning. A physician's medical opinion is likely to be more comprehensive and probative if it is based on extensive objective medical documentation such as radiographic tests and physical examinations. *Hoffman v. B & G Construction Co.*, 8 B.L.R. 1-65 (1985). A doctor's reasoning that is both supported by objective medical tests and consistent with all the documentation in the record, is entitled to greater probative weight. *Fields v. Island Creek Coal Co.*, 10 B.L.R. 1-19 (1987). Additionally, to be considered well reasoned, the physician's conclusion must be stated without equivocation or vagueness. *Justice v. Island Creek Coal Co.*, 11 B.L.R. 1-91 (1988).

In terms of documentation, Dr. Ma had the best foundation on which to base his opinion.¹³ He is the only physician to review the entire medical record. Further, due to the timing of the most recent cervical x-ray, he is the only doctor who considered that radiographic evidence. Had Dr. Ma's reasoning been equally as solid, his opinion would have been the most probative on the characteristics of Mr. Barroza's neck condition in February 2000. However, Dr. Ma's reasoning suffers somewhat on this issue because he did not clearly address that effect of the July 2000 MRI showing a C6-7 herniation and C3-4 and C5-6 disc bulges. After noting that the July 2003 cervical x-rays showed normal disc spacing for a gentleman of Mr. Barroza's age, Dr. Ma did not go on and reconcile his x-ray imaging interpretation of normal disc spacing and the absence of vertebral narrowing with the earlier 2000 MRI disc herniation/bulge findings. Since Dr. Ma reviewed the 2000 medical record and did not include disc herniation or bulge in his final diagnosis, the physician appears to rely solely on his recent cervical x-ray studies. Unfortunately, he didn't sufficiently discuss how he was able to eliminate the 2000 MRI disc abnormalities from his consideration.

In terms of reasoning on the issue of disc herniation, the assessments of Dr. Fryberg, Dr. Lau, and Dr. Gackle are certainly consistent with the 2000 MRI study. However, their three assessments have a documentary shortfall. None of the three physicians considered the most recent normal cervical studies. Due to the timing these later x-ray studies, the absence of that consideration is understandable. Nevertheless, Dr. Ma's observation of normal disc spacing in the July 2003 cervical x-rays and his subsequent diagnosis of a normal cervical spine places into question the validity of the other physicians' disc herniation/lesion diagnoses. Additionally, I note that Dr. Gackle's conclusion is further diminished by the absence of an explanation for his focus on the C5-6 lesion, rather than the C6-7 disc herniation noted by Dr. Fryberg and Dr. Lau on the 2000 MRI.

In summary, on the issue of cervical disc abnormalities, due to a reasoning shortfall, Dr. Ma's diagnosis of a normal to near-normal cervical spine has diminished probative value. At the same time, due principally to less-than-complete documentation, the cervical disc herniation/lesion diagnoses by Dr. Fryberg, Dr. Lau and Dr. Gackle also have diminished probative value. In light of these probative value deficiencies, I find neither medical position on the presence of a cervical disc abnormality more convincing than the other. As a result, the preponderance of the medical evidence fails to establish the presence of a cervical disc abnormality following the October 18, 1993 incident.

Considering the second disputed characteristic, radiating pain, Dr. Fryberg initially did not find any evidence of cervical radiculopathy; but after Mr. Barroza presented complaints of radiating pain, she added that diagnosis. A couple of years later, Dr. Gackle also noted complaints of radiating left-side neck to shoulder pain. In contrast, although aware of the same medical evidence, Dr. Ma did not find any radiating pain upon examination and did not include cervical radiculopathy in his diagnosis or summary of Mr. Barroza's neck condition.

¹³Dr. Ma's comprehensive review of the various physician's treatment notes, along with his own examination of Mr. Barroza, essentially neutralizes the otherwise enhanced status Dr. Fryberg and Dr. Gackle may have obtained as treating physicians.

In considering this medical dispute, I first find the assessment of Dr. Fryberg has diminished probative value because she did not explain how her diagnosis of radiculopathy was consistent with the normal EMG. Next, Dr. Gackle acknowledged the normal EMG; yet, he believed Mr. Barroza's clinical presentation was in part related to the C5-6 disc lesion. Since I have found insufficient evidence to establish a disc abnormality, his assessment has diminished probative value. Arguably, since he reviewed the entire record, Dr. Ma's opinion also loses some probative value because he did not discuss the radiating pain findings by Dr. Fryberg and Dr. Gackle. Accordingly, due to the respective deficiencies in the medical opinions, the evidentiary record is insufficient to establish that Mr. Barroza had radiating left-sided pain related to his February 15, 2000 injury.

Finally, concerning the duration of Mr. Barroza's pain complaints, in September 2000, Dr. Fryberg indicated the cervical examination was essentially normal and returned him to regular duty. However, Mr. Barroza testified that his neck pain persisted after September 2000. Eventually, in November 2002, he went to Dr. Gackle who found cervical muscle tightness and diagnosed chronic neck pain. In July 2003, Dr. Ma noted Mr. Barroza's subjective complaints of cervical tightness and pain.

Due to the absence of any medical treatment notes between September 2000 and November 2002, whether Mr. Barroza continued to experience neck tightness and pain after September 2000 basically rests on his testimony. As discussed below, I have significant concern about the accuracy of Mr. Barroza's recollection of events and specific details associated with his most recent injury. However, for the following reasons, in regards to his pain complaints, I find his claim of continued neck tightness and pain to be credible. First, at the hearing, in terms of demeanor, Mr. Barroza appeared to be generally credible. Second, Dr. Gackle specifically concluded that Mr. Barroza was not malingering. Third, none of the physicians who treated Mr. Barroza, including Dr. Ma, directly challenged the veracity of Mr. Barroza's pain presentation. Consequently, based on his believable testimony in regards to the duration of his pain, as corroborated by Dr. Gackle, I find that Mr. Barroza has struggled with chronic and persistent neck tightness and pain since February 16, 2000.

In conclusion, I have determined that on February 16, 2000, Mr. Barroza suffered an injury consisting of neck tightness and neck pain which has remained persistent.

Causation

Having specifically addressed each of the four claimed injuries presented to me and established their characteristics, I next turn to assessing the cause of the respective injuries.

Adjudication Principles

In terms of causation, absent substantial evidence to the contrary, Section 20 (a) of the Act, 33 U.S.C. § 920 (a), establishes a presumption that a condition is causally related to employment if: a) the claimant suffered a bodily harm or injury; and, b) employment conditions existed or a work accident occurred which could have caused, aggravated, or accelerated the harm or condition. *Gencarelle v. General Dynamics Corp.* 22 BRBS 170 (1989), *aff'd* 892 F.2d

173 (2d Cir. 1989). In other words, the Act establishes a causation presumption that such a condition or injury is work-related. Significantly, while Section 20 (a) provides a causation presumption, a claimant must first establish by the preponderance of the evidence the existence of both an injury and a work-place accident or condition that could explain the injury (emphasis added). See *Devine v. Atlantic Container Lines, G.I.E.*, 25 BRBS 15 (1990).

To rebut the Section 20 (a) causation presumption, the employer must present specific medical evidence proving the absence of, or severing, the connection between the bodily harm and the employee's working condition. *Parsons Corp. v. Director, OWCP (Gunter)*, 619 F.2d 38 (9th Cir. 1980). The U.S. Circuit courts have rendered different views on the extent of such evidence. In *Brown v. Jacksonville Shipyards, Inc.*, 554 F.2d 1075 (11th Cir. 1990), the U.S. Court of Appeals for the Eleventh Circuit required the employer to produce evidence which ruled out the possibility of a causal relationship between the claimant's employment and injury. On at least one occasion, the BRB has taken a similar position. *Quinones v. H. B. Zachery, Inc.*, 32 BRBS 6, (1998). On the other hand, in *Conoco, Inc. v. Director, OWCP [Prewitt]*, 194 F.3d 684 (5th Cir. 1999), the U.S. Court of Appeals for the Fifth Circuit rejected the "rule out" standard. Instead, according to that court, an employer must produce evidence that a reasonable mind might accept as adequate to support a conclusion that the accident did not cause the injury.

Since Mr. Barroza's case arises in the Ninth Circuit, I turn to the case of *Stevens v. Todd Pacific Shipyards*, 14 BRBS 626 (1982) *aff'd mem.* 722 F.2d 747 (9th Cir. 1983), *cert. denied* 467 U.S. 1243 (1984), which tilts towards the *Conoco* standard. In *Stevens*, the appellate court affirmed a determination that when a work-related accident occurs which is followed by an injury, the employer need only introduce medical testimony controverting causation and does not have to prove another causation agent to rebut the presumption.

Once the Section 20 (a) presumption is rebutted, it no longer controls the adjudication. *Swinton v. J. Frank Kelly, Inc.* 554 F.2d 1075 (D.C. Cir.) *cert. denied* 429 U.S. 820 (1976). Instead, all the evidence in the record must be evaluated and the causation issue is then determined based on the preponderance of the evidence. *Noble Drilling Co. v. Drake*, 795 F.2d 478 (5th Cir. 1986).

Additionally, if a claimant establishes the existence of a compensable injury, then through the causation presumption under Section 20 (a), the employer remains responsible for all natural consequences of that injury, whether they occur at work or away from work. *Bludworth Shipyards v. Lira*, 700 F.2d 1046 (5th Cir. 1983) and *Kooley v. Marine Industries N.W.*, 22 BRBS 142 (1989). As a result, when an employee sustains an injury at work which is followed by the occurrence of a subsequent injury or aggravation, the employer is liable for the entire disability and the medical expenses due to both injuries if the subsequent injury or aggravation is the natural and unavoidable result or consequence of the original work-related injury.¹⁴ *Bludworth*, 700 F.2d at 1050.

¹⁴For example, in *Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991), based on a treating physician's opinion that no new injury occurred when the claimant suffered severe back pain when doing yard work, the Benefits Review Board affirmed the administrative law judge's finding that the claimant's recurring back problems were natural and unavoidable consequences of his employment.

The employer may sever the work-related connection of subsequent claimed injuries generated by the statutory presumption. To be relieved of liability for that portion of the disability attributable to the second injury or aggravation, the employer may present either a) substantial contrary evidence of an absence of a connection; or, b) evidence of an intervening cause, such as intentional conduct, for the subsequent injury. *Merrill v. Todd Pacific Shipyards Corp.* 25 BRBS 140, 144 (1991), *James v. Pate Stevedoring Co.* 22 BRBS 271 (1989), and *Bailey v. Bethlehem Steel Corp.* 20 BRBS 14 (1987). The court in *Bludworth*, 700 F.2d at 1050, further explained, “[a] subsequent injury is compensable if it is the direct and natural result of a compensable primary injury, as long as the subsequent progression of the condition is not shown to have been worsened by an independent cause.”

Finally, if a claimant’s employment aggravates a non-work-related, underlying disease or condition so as to produce incapacitating symptoms, the resulting disability may be compensable. See *Gardner v. Bath Iron Works*, 11 BRBS 556 (1979), *aff’d sub nom. Gardner v. Director, OWCP*, 640 F.2d 1385 (1st Cir. 1981).

Discussion

As I have previously determined, Mr. Barroza has established four incidents of an injury or harm. Thus, the central issue at this point is whether an accident occurred or an employment condition existed that could explain each injury. If so, then I must apply the causation presumption/rebuttal/preponderance of the evidence analysis to decide the work-relatedness of each injury. Additionally, I must consider whether any of the subsequent injuries represent a natural consequence or complication of an earlier compensable injury.

A. February 1, 1989

On February 1, 1989, Mr. Barroza suffered a strain to his neck, back and shoulder without any other damage to the cervical area. As the parties stipulated, on that same day, Mr. Barroza reported to his Navy Exchange supervisor that he had felt a muscle pull in his upper back while attempting to lift a strut out of the vehicle. No factual dispute exists as to the accuracy of Mr. Barroza’s description of the circumstances surrounding his pulled upper back muscle.

The preponderance of the evidence establishes that on February 1, 1989, Mr. Barroza suffered an injury and was involved in an accident at the Navy Exchange auto store which could have caused such an injury. Based on these two facts, Mr. Barroza is able to invoke under Section 20 (a) of the Act the presumption that his February 1, 1989 neck, back and shoulder strain was caused by the accident that occurred on that day during his employment as a Navy Exchange auto mechanic.

In reviewing the circumstances of the February 1, 1989 injury, Dr. Ma did not present any evidence to suggest the injury was not work-related. As a result, through the un-rebutted Section 20 (a) presumption, Mr. Barroza has established that he suffered a work related injury on February 1, 1989.

B. October 18, 1993

On October 18, 1993, Mr. Barroza suffered an injury consisting of neck muscle spasms and pain, without any other involvement of the cervical area. Mr. Barroza claims this particular experience was caused by his work with the Navy Exchange.

Accident

No evidence has been presented that a specific accident or incident at work precipitated the injury. In fact, Mr. Barroza recalled no exceptional or unusual activity at the auto store just prior to October 18, 1993. Rather, the record demonstrates that on the morning of October 18, 1993, Mr. Barroza awoke with a bent, stiff, and painful neck. Under these circumstances, Mr. Barroza is not able to invoke the Section 20 (a) causation presumption on the basis of a traumatic work-place accident.

Condition of Employment

Even though no accident occurred at work prior to this neck injury, Mr. Barroza may invoke the Section 20 (a) causation presumption if some condition of his employment could have caused his October 18, 1993 neck problem.

During the hearing, Dr. Gackle indicated that the awkward positions Mr. Barroza had to assume as an auto mechanic contributed to the condition of his neck. However, the physician admitted he was primarily focused on the medical attention Mr. Barroza might need in 2002. In other words, Dr. Gackle's opinion related to the condition of Mr. Barroza's neck in November 2002. The doctor did not specifically address whether the October 1993 injury may have been caused by a condition of Mr. Barroza's employment with the Navy Exchange. The absence of such a focus is significant because between 1972 to February 1989, February 1990 to October 1993, and March 1994 to February 16, 2000, Mr. Barroza was able to accomplish his auto mechanic work without suffering an incapacitating neck pain in the morning. As a result, due to the nature of Dr. Gackle's conclusion and his focus on Mr. Barroza's neck problem in the fall of 2002, I believe his presentation is insufficient evidence that the morning neck pain Mr. Barroza experienced on October 18, 1993 occurred due to some condition of his Navy Exchange employment. I also note that by October 1993, Mr. Barroza was working part-time as an auto mechanic and full-time as a security guard. The record contains some evidence that while not physically intensive, the extensive walking associated with his security guard employment could be problematic for his neck. For these reasons, Mr. Barroza is not able to invoke the Section 20 (a) causation presumption based on a condition of his employment with the Navy Exchange.

Consequence/Complication

Although the Section 20 (a) presumption is not available to Mr. Barroza, he may still establish that his October 1993 injury is compensable if the injury was related to the February 1, 1989 injury as a natural consequence, or further complication. As set out in his March 1994 injury report and recent testimony, Mr. Barroza believes the injury he experienced on October 18, 1993 was related to his earlier February 1, 1989 injury because the neck pain he experienced

upon waking was the same type of pain he suffered on February 1, 1989. As support, he asserted that his treating physician, Dr. Vernoy, also believed the two injuries were connected. The treatment notes in the record do not directly reflect Dr. Vernoy's assessment that the October 1993 injury was a complication arising from the earlier February 1989 injury; however, to the extent he reached such a conclusion, it has little probative weight for two reasons.¹⁵

First, and significantly, Dr. Vernoy's documentary foundation is deficient. In his initial treatment note, the physician reported that Mr. Barroza continued to experience intermittent neck pain after February 1989. However, as I have previously discussed, Mr. Barroza has indicated that his symptoms relating to the February 1989 injury were resolved within a year. He specifically testified in his deposition that after the symptoms from the February 1989 injury were gone, he did not experience any neck problems until the morning of October 18, 1993. Thus, to the extent that Dr. Vernoy relied on Mr. Barroza's continuing pain representation, his conclusion about the connection between the two injuries has diminished probative value.

Second, Dr. Vernoy did not explain how he determined a connection existed between the two injuries. Having diagnosed muscle pain due to C2-3 nerve impingement, Dr. Vernoy did not explain how the neck strain of February 1989 played a role in the cervical nerve impingement he diagnosed four years later in October 1993. Notably, Dr. Vernoy also did not indicate that the February 1989 injury had aggravated or accelerated the C2-3 nerve condition.¹⁶

For these two reasons, Dr. Vernoy's treatment notes offer little support for a conclusion that Mr. Barroza's October 18, 1993 injury represented a complication or consequence of the February 1989 neck strain. In the absence of such probative evidence, Mr. Barroza's representation that the pain associated with the two injuries, which are separated by four years, was the same does not sufficiently prove a connection.

Summary

Even though Mr. Barroza suffered a neck sprain on October 18, 1993 when he woke up, the record contains no evidence that a work-related accident occurred just prior to that morning. Mr. Barroza is also unable to establish that a condition of his employment as an auto mechanic could have caused his neck problem. Accordingly, Mr. Barroza has failed to invoke the Section 20 (a) causation presumption. Due to insufficient probative value, the medical opinion in the records further fails to demonstrate that the October 18, 1993 neck pain was a complication or natural consequence of the earlier February 1, 1989 neck injury. As a result, Mr. Barroza has not met his burden of proving that his October 18, 1993 neck pain was compensable as a work-related injury.

¹⁵In the treatment notes, Dr. Vernoy mentioned the February 1989 neck injury and then characterized the October 1993 as a re-injury. However, Dr. Vernoy did not specify what event occurred in October 1993 that caused the re-injury. In subsequent physical therapy treatment notes, Mr. Barroza's statement that he awoke one morning in October 1993 with a painful neck is indicated to be the underlying event.

¹⁶Due to significant conflict in the objective medical tests, I have previously concluded insufficient evidence exists to establish the presence of a nerve impingement at C2-3.

C. February 9, 1998

On February 9, 1998, Mr. Barroza suffered an injury to his low back, consisting of a muscle strain. Although during his deposition, Mr. Barroza did not recall the specific details of the associated work incident, the parties have stipulated that on February 10, 1998, he informed his supervisor at the Navy Exchange that he had felt a pain from his low back to the top of his shoulders the day before while removing a vehicle's starter. His February 19, 1998 injury report contains the same details. During the hearing, Mr. Barroza provided credible testimony concerning circumstances of his back pain of February 9, 1998. In regards to the events of February 9, 1998, no factual dispute exists.

The preponderance of the evidence establishes that on February 9, 1998, Mr. Barroza suffered a low back muscle strain. On the same day, he was engaged in the torturous task of removing a vehicle starter by reaching around the vehicle's axle. This activity could have strained his back. Based on these facts, Mr. Barroza has raised the Section 20 (a) presumption that his work on the vehicle starter caused the injury to his low back.

During his review of the medical record, Dr. Ma did not present an opinion that rebuts the causation presumption. He acknowledged that on occasion, Mr. Barroza may have suffered "temporary exacerbation" and had suffered a "resolved" lumbosacral strain. Consequently, through the un-rebutted presumption of Section 20 (a), Mr. Barroza has proven that his employment at the Navy Exchange as an auto mechanic caused his February 9, 1998 low back injury.

D. February 15, 2000

On February 16, 2000, Mr. Barroza experienced neck tightness and pain which has remained persistent. In mid-April 2000, he presented a claim for compensation and medical treatment on the basis that the February 16, 2000 neck pain was caused by his work at the Navy Exchange the day before on February 15, 2000.

Accident

The central basis for Mr. Barroza's claim concerning this injury is his allegation that he hurt his neck on February 15, 2000 while working as a Navy Exchange auto mechanic. Determining the causation circumstances associated with his claimed injury is complex due to conflicting evidence in the record and Mr. Barroza's "fuzzy" recollection of the "whole situation." My analysis of this evidentiary difficulty begins with a chronological review of the evidence.

February 16, 2000 – Mr. Barroza presents to Dr. Yamashita with neck pain. According to the physician, Mr. Barroza reported that he woke up with a stiff neck. Mr. Barroza was uncertain whether he re-aggravated an old injury, but recalled "no specific injury."

April 13, 2000 – When he is examined by Dr. Fryberg, Mr. Barroza mentions his belief that a re-aggravation of the 1989 neck injury has occurred. However, Mr. Barroza does not recall any “specific new mode of injury.”

April 18, 2000 – In a disability compensation form, Mr. Barroza claims he strained his neck at work on February 15, 2000 while lifting in an awkward position. Mr. Barroza indicates that he reported the incident to his supervisor, “Derek.”

May 23, 2000 – The Employer files notice of Mr. Barroza’s claim and notes that Mr. Barroza did not report an accident occurring on February 15, 2000.

May 2000 to September 2000 – Both Dr. Fryberg and Dr. Lau provide medical treatment for Mr. Barroza’s neck problem. Neither physician adds any information about the circumstances preceding Mr. Barroza’s neck pain presentation on February 16, 2000.

November 20, 2002 – Mr. Barroza tells Dr. Gackle that he suffered a neck injury on February 15, 2000 while still working as an auto mechanic and that the injury actually occurred prior to February 15, 2000, going back as far as 1992, with a re-aggravation in 1995.

January 2003 to May 2003 – other than his review of Dr. Yamashita’s entry (next summarized) Dr. Gackle’s treatment notes do not contain any other information about the circumstances of the February 16, 2000 neck pain.¹⁷

February 9, 2003 – In his review of Mr. Barroza’s medical record, Dr. Gackle summarizes Dr. Yamashita’s treatment notes by indicating Mr. Barroza reported waking with a stiff neck on February 16, 2000 and believed the problem was due to an old injury.

April 8, 2003 – In his deposition, Mr. Barroza states that on February 15, 2000, he was installing a starter on a four-wheel-drive vehicle. While bending in an awkward position, he felt a sharp pain in the back of his neck. He stopped work and rested. When he tried to resume work, the pain returned. He told his supervisor, Derek, about the problem and another mechanic completed the starter job. Concerning his visit with Dr. Yamashita, Mr. Barroza initially stated he visited the doctor on the same day that he experienced the sharp pain. After reviewing the treatment note date, he agreed that he really saw Dr. Yamashita the next day. Concerning his presentation to Dr. Yamashita, Mr. Barroza initially stated he told the doctor about feeling a neck pain at work. He did not recall mentioning to Dr. Yamashita that he woke up with a stiff neck. When presented with Dr. Yamashita’s notation that Mr. Barroza reported waking up with a stiff neck, he didn’t remember having that conversation with the physician. Mr. Barroza further explained that he did not consider the neck pain while installing the starter to be an accident; he was simply performing one of his usual tasks and felt a twinge, which he had previously experienced in other parts of his body. Consequently, because he believed Dr. Yamashita was inquiring only about a traumatic or unusual accident, Mr. Barroza did not tell him about the neck sting at work the day before the visit with the doctor. Only later, in April 2000 after his pain had diminished, Mr. Barroza began thinking about the day before he awoke with a stiff neck

¹⁷At the hearing, Dr. Gackle testified that the medical record contained no information about Mr. Barroza experiencing neck pain on February 15, 2000 while working on a vehicle starter.

and concluded the sharp sting while working on the vehicle starter must have been related to the neck problem on the morning of February 16, 2000. After being off work for a short period of time, Mr. Barroza returned to light duty at the retail store checking identification cards and watching surveillance cameras; later, he returned to the auto store in a light duty capacity doing safety inspections until he retired.

May 13, 2003 – In his hearing testimony, Mr. Barroza states that in the months prior to February 15, 2000, he did not have any problems with his neck. Then, on February 15, 2000, while reaching in a strange position, he felt a sting in his neck and stopped work. After resting, he tried to work again but the sting came back. Another mechanic, Kevin, finished the job. Although he had stated in his deposition that he told the supervisor, Derek, about the incident, Mr. Barroza had since discovered that Derek stopped working in the auto store in January 2000. According to Mr. Barroza, he is “fuzzy about the whole situation.” The next morning, he woke up with a stiff neck and went to Dr. Yamashita. Concerning the physician’s treatment note entries for February 16, 2000, Mr. Barroza explained that he was concentrating on the pain at that time and didn’t think to tell the doctor about the incident the day before. He really doesn’t know why he failed to tell Dr. Yamashita about the neck sting the day before. Due to the similarity of the pain and its location, Mr. Barroza believed he might have hurt his old injury of 1989. He later expressed that belief to Dr. Fryberg but did not tell her about the stinging pain incident because it was a “doctor-doctor thing.” Finally, after reviewing Navy Exchange pay records, Mr. Barroza agreed that he only worked one day after the accident prior to retiring as an auto mechanic.

With this summary in mind, I turn to the key issue of whether an incident or accident at work occurred on February 15, 2000 that could have caused Mr. Barroza’s neck pain the next day. Significantly, in the absence of any other corroboration in terms of contemporaneous accident reports, medical treatment note entries, or other witnesses, a determination about the events of February 15, 2000 rests solely on the reliability and accuracy of Mr. Barroza’s recollection. As I have previously mentioned, Mr. Barroza appeared to be a generally credible witness. However, upon consideration of the entire record, I conclude Mr. Barroza’s recollection about the events of February 15, 2000 is not sufficiently reliable to establish that a work-related accident occurred on that day.

The principle reason I will not rely on Mr. Barroza’s hearing testimony about the circumstances of February 15, 2000 is the insufficiently explained existence of two different versions about the circumstances of his neck injury that he a) presented to Dr. Yamashita on February 16, 2000 and Dr. Fryberg in early April 2000; and, b) described in his April 2003 deposition and May 2003 hearing testimony. Initially, Mr. Barroza told Dr. Yamashita that he experienced a painful stiff neck upon waking on February 16, 2000. He suggested his condition might represent a re-aggravation of an old injury and denied any specific injury. A few months later, he presented to Dr. Fryberg with the same injury background and again denied any new mode of specific injury. Yet, during the current litigation, Mr. Barroza stated he hurt his neck on February 15, 2000 reaching in an awkward position to fix a vehicle starter.

During his deposition, after describing the starter repair neck pain on February 15, 2000, Mr. Barroza was confronted with Dr. Yamashita’s February 16, 2000 treatment notes which

described a different scenario and annotated Mr. Barroza's statement about the absence of any new injury. At first, Mr. Barroza was confused about Dr. Yamashita's medical treatment note injury history and really didn't know why he failed to tell the physician about the neck pain the day before while working on the starter repair job. Then, in an attempt to reconcile the two different versions about his neck injury, Mr. Barroza provided two explanations at the deposition and hearing. First, since the sharp neck pain occurred during the course of a regular starter repair job, Mr. Barroza did not consider the neck sting to be an accident. As a result, he answered Dr. Yamashita's inquiry about any specific injury in the negative. Second, due to the significant neck pain, Mr. Barroza was just concentrating on relieving the pain during his visit with Dr. Yamashita. He did not make the connection between the February 15, 2000 neck sting incident and his neck pain the next morning until later, in mid-April 2000, when the pain was relieved.

Neither explanation satisfactorily resolves the inconsistent versions. As described by Mr. Barroza in his testimony, the sting he felt in his neck on February 15, 2000 was not simply a minor, forgettable irritation. The pain was so sharp it caused him to immediately stop work and rest. Then, when the sharp pain occurred again upon resuming the work, he had to abandon the starter repair job. In other words, both the nature of the cervical pain, a recurring sharp sting, and its consequence, an inability to complete a job, were clearly significant and memorable. Further, Mr. Barroza had experienced a similar work-stopping sharp neck pain only once before, in February 1, 1989. On that occasion, Mr. Barroza did not hesitate to report the incident as an injury to his treating physician the next day. Yet, when the same painful neck sensation stopped him from finishing a repair job on February 15, 2000, Mr. Barroza asks me to believe he did not report the incident to Dr. Yamashita because he believed this second sharp neck pain incident was not injury. Within the context of the record before me, despite his witness demeanor, this explanation is nonsensical, inconsistent with his past behavior, and places into serious question whether the starter repair incident occurred on February 15, 2000.

In regards to Mr. Barroza being too focused on his pain to recall the starter repair incident, if his purpose in seeing Dr. Yamashita was relief from his neck pain, then he was certainly motivated to provide Dr. Yamashita the most accurate history involving his neck, especially including any episodes at work involving his neck which may have occurred just prior to the painful morning of February 16, 2000. Notably, the extreme pain did not preclude Mr. Barroza from presenting some neck injury history because he suggested to the doctor his problem might relate to an old neck injury. If his pain did not prevent that recollection, it should not have precluded his ability to recall a neck pain event that occurred the day before. Further, in February 1989 and February 1998, severe pain did not prevent Mr. Barroza from informing his treating physicians about the strut repair and starter repair incidents that had occurred just prior to his visit to the doctors. Rather than resolve the two versions, the presence of extreme neck pain on the morning of February 16, 2000 renders Mr. Barroza's failure to tell Dr. Yamashita about the claimed February 15, 2000 starter repair job neck pain incident inexplicable. His purported inaction due to the extreme pain is inconsistent with his past behavior and raises sufficient doubt in my mind that the starter repair incident occurred just prior to the morning neck pain of February 16, 2000.

At the hearing, Mr. Barroza also stated he did not tell Dr. Fryberg about the February 15, 2000 incident because it was "doctor-doctor thing." The ineffectiveness of that explanation is

readily apparent because I don't understand what he means. In any event, by April 2000, when Mr. Barroza saw Dr. Fryberg, his neck pain was diminishing due to medication. As a result, with pain no longer clouding his memory, rather than indicating to Dr. Fryberg that he suffered no new injury, he should have been capable of providing an accurate neck pain and injury history to the occupational doctor who was attempting to resolve his neck problem. I also note that after he apparently made the mid-April 2000 connection between a work incident on February 15, 2000 and his stiff neck the next morning, Mr. Barroza did not mention that connection to Dr. Fryberg, Dr. Lau, or Dr. Gackle during their subsequent treatments.

At best, Mr. Barroza's presentation of two different circumstances concerning his February 16, 2000 neck injury to his physicians and me was caused by his fuzziness about the events.¹⁸ Regardless, I conclude that Mr. Barroza's failure to inform Dr. Yamashita on February 16, 2000 about the alleged work-related neck pain incident the day before, coupled with his insufficient explanations for not providing that significant information to the treating physician, casts a grievous pall on the reliability of his hearing testimony asserting such a work-related incident occurred. Due to the doubtful reliability of his recollection during this litigation about the circumstances preceding his February 16, 2000 neck pain, I find Mr. Barroza has failed to establish that an accident occurred at work on February 15, 2000 which could have caused his February 16, 2000 neck pain. As a result, Mr. Barroza is not able to invoke the causation presumption under Section 20 (a) on the basis of a specific work-related incident or accident.

Condition of Employment

Again, even in the absence of sufficient evidence of a work-place accident, Mr. Barroza may still invoke the Section 20 (a) causation presumption if a condition of his employment could have caused his painful and stiff neck on February 16, 2000. In that regard, Dr. Gackle opined that Mr. Barroza's present, persistent neck problem is a symptom of his degenerative joint disease that has been partially affected by his physically difficult work as an auto mechanic. Essentially, the physician believes the long term effect of Mr. Barroza's strenuous work as a auto mechanic has accelerated this underlying, abnormal cervical condition. Based on Dr. Gackle's opinion, Mr. Barroza is able to invoke the Section 20 (a) presumption that his employment with the Navy Exchange caused his February 16, 2000 neck pain.

In response to Dr. Gackle's assessment, the Employer has presented the opinion of Dr. Ma, who fundamentally disagrees with Dr. Gackle's causation opinion. According to Dr. Ma, while Mr. Barroza may have experienced some accumulated incidents of neck pain as a result of his employment, he has a normal cervical spine without any abnormal underlying pathology. Dr. Ma based his conclusion on a review of the medical record, an examination of Mr. Barroza, and his interpretation of recent x-ray studies of the cervical spine. Dr. Ma believes Mr. Barroza has only suffered temporary muscular distress associated with the physically stressful events at work; none of the incidents caused a long term or permanent impairment. Through Dr. Ma's opinion,

¹⁸Of course, other explanations are possible. Of note, when Mr. Barroza reported a neck pain upon waking in October 1993, and did not recall any specific injury, the insurer hesitated for some time prior to approving his claim for medical benefits. In contrast, after reporting straining his back and neck in February 1998 while repairing a vehicle starter and suffering a painful neck the next day, the insurer did not strongly contest his entitlement of medical treatment.

especially his finding of no underlying cervical pathology, the Employer has sufficiently rebutted the causation presumption raised by Dr. Gackle's opinion.

Due to the rebuttal of the Section 20 (a) presumption, Mr. Barroza must establish by the preponderance of the evidence that a condition of his employment caused his February 16, 2000 neck pain. In determining whether Mr. Barroza has met his burden of proof, I return to the medical duel between Dr. Gackle and Dr. Ma.

In assessing relative probative weight of the conflicting medical opinions, I find Dr. Gackle's loses probative value because one of the principle components of his opinion about the cumulative effect of Mr. Barroza's mechanic work is the presence of an underlying degenerative disc disease. While that diagnosis is not necessarily unreasonably based on his documentation, I have previously discounted Dr. Gackle's abnormal disc diagnosis because he did not review Dr. Ma's recent series of cervical x-rays which showed a normal cervical spine. Since I have been unable to determine that Mr. Barroza has an abnormal cervical spine, Dr. Gackle's opinion on the long term effects of his employment on degenerative disc disease loses probative value.

Dr. Gackle's analysis also has some reasoning problems. After acknowledging that extensive walking might aggravate Mr. Barroza's neck, Dr. Gackle did not sufficiently address how he was able to exclude Mr. Barroza's long-term work as a security guard, with its extensive walking requirements, as a causation factor. The lack of this consideration is important since a) Mr. Barroza has been a full-time guard and only a part-time mechanic since 1992; and, b) Mr. Barroza retired as an auto mechanic in March 2000 but has continued his full-time security work. Additionally, Dr. Gackle provided no further comment after agreeing that Mr. Barroza's age and genetics, standing alone, could produce symptoms.

As previously mentioned, Dr. Ma's opinion also suffers from a lack of sufficient reconciliation of the earlier abnormal MRI findings used by Dr. Gackle, and his own series of cervical x-rays showing a normal neck.

Essentially, due principally to the probative value issues associated with Dr. Gackle's opinion, coupled with the otherwise evidentiary stand-off between the diminished assessments of both Dr. Gackle and Dr. Ma, I conclude Mr. Barroza has failed to demonstrate by the preponderance of the evidence that some condition of his long-term employment as an auto mechanic caused his present neck problem.

Complication/Consequence

As presented to Dr. Yamashita, Dr. Fryberg, and Dr. Gackle, and reviewed by Dr. Ma, Mr. Barroza believed his February 16, 2000 neck pain may represent a re-aggravation of his earlier 1989 neck injury, especially since the pain sensations were similar.

Even though Mr. Barroza suggested a re-aggravation of an old injury, Dr. Yamashita did not specifically address the relationship. He simply diagnosed a cervical strain with some spasms. Apparently based on Mr. Barroza's representation of a re-aggravation of an old work-related injury, Dr. Yamashita referred Mr. Barroza to occupational medicine.

Upon her initial examination of Mr. Barroza, having concluded he suffered an impingement at C2-3, Dr. Fryberg provisionally diagnosed a re-aggravation of the 1989 injury. However, when subsequent radiographic imaging did not confirm the C2-3 impingement, the physician no longer diagnosed a re-aggravation of an old injury.

After reviewing the medical record through September 2000, and examining Mr. Barroza on multiple occasions, Dr. Gackle believed that present and future medical treatment represented necessary and reasonable medical care for his 1989 industrial accident. The physician explained the connection existed because Mr. Barroza's neck problems have never completely gone away since the initial 1989 injury.

After his medical record review and examination of Mr. Barroza, Dr. Ma concluded that his 1989 neck injury had resolved. The physician attributed any remaining neck tightness or pain to fixation and possibly over-treatment. Mr. Barroza's present condition was not caused by any employment-related accident, incident, or injury.

Dr. Yamashita did not express an opinion on the relationship between the February 2000 neck pain and the 1989 neck injury. Likewise, after changing her initial diagnosis, Dr. Fryberg no longer connected the two injuries. That leaves the disagreement between Dr. Gackle and Dr. Ma.

In assessing the probative value of their opinions on this issue, Dr. Gackle's assessment has diminished impact because he relies on a medical history that is inconsistent with my previous finding. According to Dr. Gackle, Mr. Barroza's 1989 neck injury never completely healed in light of his continued neck problems. For reasons previously discussed, I have concluded that by February 1990, Mr. Barroza no longer had any difficulty associated with his July 1989 neck injury. In particular, the medical record from that period showed no evidence of any permanent physical damage to his neck. Instead, Mr. Barroza suffered a neck strain that completely healed within a year.

In contrast, Dr. Ma's assessment about the absence of a connection between the sprained neck of 1989 and stiff neck of February 2000 is more consistent with the entire medical record and my previous findings and correspondingly, more probative on the nature of any such relationship. Thus, the preponderance of the more probative evidence indicates Mr. Barroza's February 16, 2000 stiff and painful neck is neither a complication nor consequence of his February 1, 1989 neck injury.

Summary

On February 16, 2000, Mr. Barroza suffered a stiff and painful neck, which has persisted. Due to the inconsistency of his hearing testimony with previous statements to physicians about the circumstances of his neck injury, Mr. Barroza's uncorroborated testimony is insufficient to prove an incident occurred at work on February 15, 2000 which could have caused his February 16, 2000 neck injury. Mr. Barroza also did not prove that some condition of his employment caused his February 16, 2000 neck injury. Finally, Mr. Barroza has not established by the preponderance of the evidence that his present neck condition is a complication or natural

consequence of his February 1989 injury. As a result, Mr. Barroza has not met his burden of proving that his February 16, 2000 neck injury is compensable as a work-related injury.

Issue No. 2 - Medical Benefits

Under Section 7 (a) of the Act, 33 U.S.C. § 907 (a), if an employee suffers a compensable injury, then the employer is responsible for those reasonable and necessary medical expenses incurred as a result of a work-related injury to the extent the injury may require. *Perez v. Sea-Land Services, Inc.*, 8 BRBS 130 (1978). The employer's responsibility is continuing and exists even if a claim for disability compensation is time-barred by Section 12 and Section 13 of the Act,¹⁹ *Strachen Shipping co. v. Hollis*, 460 F.2d 1108 (5th Cir.) *cert. denied*, 409 U.S. 887 (1972), or fails to satisfy the Section 8 requirements for disability compensation, *Ingalls Shipbuilding v. Director, OWCP*, 991 F.2d 163, 166 (5th Cir. 1993). In other words, entitlement to medical services is never time-barred where a disability is related to a compensable injury. *Colburn v. General Dynamics Corp.*, 21 BRBS 219 (1988). Under this section, a claimant is entitled to reimbursement for reasonable travel expenses in seeking medical care and treatment for his work-related injury. *Tough v. General Dynamics Corp.*, 22 BRBS 356 (1989). At the same time, an employee may not receive an award of medical benefits absent evidence of medical expenses incurred in the past or treatment necessary in the future. *Ingalls*, 991 F.2d at 166. The claimant carries the burden to establish the necessity of medical treatment for, and that medical expenses are related to, a compensable injury. *See generally Schoen v. U.S. Chamber of Commerce*, 30 BRBS 112 (1996) and *Pardee v. Army & Air Force Exchange Service*, 13 BRBS 1130 (1981).

At this point, Mr. Barroza has established that on February 1, 1989 and February 9, 1998, he suffered work-related, and thus compensable injuries to his neck and low back respectively. Following both work-related injuries of February 1989 and February 1998, the Navy Exchange provided medical benefits to Mr. Barroza until his return to work in February 1990 and May 1998 without restrictions. Since both injuries were resolved by this medical care, and Mr. Barroza's other neck injuries are not related to these two compensable injuries, no further treatment is warranted in regards to the neck strain on February 1, 1989 and low back strain on February 9, 1998.

After some apparent hesitation, the Navy Exchange also provided medical care for Mr. Barroza's October 18, 1993 neck pain incident until his return to full duty without restrictions in May 1994. However, since I have now determined that Mr. Barroza has failed to establish that his October 1993 neck injury was related to his employment with the Navy Exchange, the Employer is not obligated to provide any further medical benefits in regards to this injury.

Certainly through the testimony of Dr. Gackle, Mr. Barroza has presented some evidence of a need for continued medical treatment for his February 16, 2000 neck injury, consisting of persistent neck tightness and pain. However, because Mr. Barroza has not proven this injury was

¹⁹In part, Section 12 (a) of the Act, 33 U.S.C. § 912 (a) requires that a claimant provide notice of a work-related injury within 30 days of the date of injury. According to Section 13 (a), 33 U.S.C. § 913 (a), a claim for disability compensation will be barred unless it is filed within one year after the injury

work-related, it is not a compensable injury under the Act and he is not entitled to medical benefits for his most recent neck pain injury.

In conclusion, based on my determinations, none of the presently requested medical treatments are warranted for the two compensable injuries of February 1989 and February 1998. Since neither the October 18, 1993 nor the February 16, 2000 neck injuries are compensable under the Act, the Employer is not obligated to provide medical treatment for these two injuries. Consequently, Mr. Barroza's present medical benefit claims for these four injuries must be denied.

ORDER

Based on my findings of fact, conclusions of law, and the entire record, I issue the following order:

The claims of MR. STEVEN BARROZA for medical benefits due to his claimed injuries on February 1, 1989, October 18, 1993, February 9, 1998, and February 15, 2000 are **DENIED**.

SO ORDERED:

A
RICHARD T. STANSELL-GAMM
Administrative Law Judge

Date Signed: August 23, 2004
Washington, DC